E-FILED
Rachel Dombrowski, Clerk
Appellate Court of Maryland
11/12/2024 4:19 PM

ACM-REG-0870-2024

In The
Appellate Court of Maryland

September Term, 2024

No. 870

Justin K. Holder

Appellant,

vs.

Washington County Board of County Commissioners, et al.

Appellees.

APPEAL FROM THE CIRCUIT COURT FOR
WASHINGTON COUNTY, MARYLAND
(The Honorable Brett Wilson)
C-21-CV-23-0000016

APPELLEES' RECORD EXTRACT

Kevin Karpinski, Esquire
John Karpinski, Esquire
KARPINSKI, CORNBROOKS & KARP, P.A.
120 East Baltimore Street, Suite 1850
Baltimore, Maryland 21202-1617
410-727-5000
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jkarpinski@bkcklaw.com
Counsel for Appellees

November 12, 2024

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Maryland Judiciary Case Search

NOTICE: Available

Case Detail

Case Information

Court System: **Circuit Court For Washington County - Civil**
Location: **Washington Circuit Court**
Case Number: **C-21-CV-23-000016**
Title: **In the Matter of Justin Holder**
Case Type: **Public Information Act Record**
Filing Date: **01/12/2023**
Case Status: **Appealed**

Other Reference Numbers

Case Appealed: **ACM-REG-0870-2024**

Involved Parties Information

Respondent

Name: **Downey, Kirk C Esquire**

Attorney(s) for the Respondent

Name: **Karpinski, Kevin**
Appearance Date: **02/21/2023**
Address Line 1: **Karpinski, Colaresi & Karp, P.A.**
Address Line 2: **120 East Baltimore Street**
Address Line 3: **Suite 1850**
City: **Baltimore** State: **MD** Zip Code: **21202-1605**

Petitioner

Name: **Holder, Justin K**

Address: **308 West Chapline Street**
City: **Sharpsburg** State: **MD** Zip Code: **21782**

Respondent

Name: **WASHINGTON COUNTY BOARD OF COUNTY COMMISSIONERS**

Address: **100 West Washington St**
City: **Hagerstown** State: **MD** Zip Code: **21740**

Attorney(s) for the Respondent

Name: **Karpinski, Kevin**
Appearance Date: **02/21/2023**
Address Line 1: **Karpinski, Colaresi & Karp, P.A.**
Address Line 2: **120 East Baltimore Street**
Address Line 3: **Suite 1850**
City: **Baltimore** State: **MD** Zip Code: **21202-1605**

Court Scheduling Information

Event Type	Event Date	Event Time	Judge	Court Location	Court Room	Result
Hearing	**04/25/2023**	**10:30:00**	**Nicklas, William R., Jr.**	**Washington County Circuit Court**	**Courtroom 2**	**CancelledReason: Postponed/Reset**
Hearing	**06/02/2023**	**09:30:00**	**Wilson, Brett Robert**	**Washington County Circuit Court**	**Courtroom 3**	**CancelledReason: Postponed/Reset**
Hearing	**09/06/2023**	**09:30:00**	**Wilson, Brett Robert**	**Washington County Circuit Court**	**Courtroom 4**	**Concluded / Held**

Judgment Information

Judgment Event Type: **Final Judgment / Decree / Order**
Judge:

Document Information

File Date: **01/12/2023**
Document Name: **Complaint / Petition**
Comment:

File Date: **01/12/2023**
Document Name: **Case Information Report Filed**
Comment: **Civil Non-Domestic**

File Date: **01/13/2023**
Document Name: **Summons Issued (Service Event)**

E. 002

Comment:

File Date: **01/13/2023**
Document Name: **Summons Issued (Service Event)**
Comment:

File Date: **01/13/2023**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Summons 1 - 16**

File Date: **01/13/2023**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Summons 2 - 16**

File Date: **01/24/2023**
Document Name: **Return of Service - Served**
Comment:

File Date: **01/24/2023**
Document Name: **Return of Service - Served**
Comment:

File Date: **02/20/2023**
Document Name: **Opposition**
Comment: **to Motion to Dismiss; or Summary Judgement**

File Date: **02/20/2023**
Document Name: **Motion**
Comment: **to Dismiss, or in the alternative, Motion for Summary Judgment**

File Date: **02/20/2023**
Document Name: **Memorandum**
Comment: **Memorandum in Support of DEFENDANTS MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **1 - Email 11/29/22**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**

Comment: **2 - Email 11/30/22**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **3 - 12/5/22**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **4 - Email 1/7/22**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **5 - 1/18/22**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **6 - Email 1/27/22**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **7 - Email 3/14/22**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **8 - Email 4/13/22**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
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File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **10 - Email 4/22/22**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **11 - Email 11/28/22**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **12 - Email 11/28/22**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **13 - Email 12/12/22**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **14 - Email 5/29/20**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **15 - Letter 5/28/2020**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **16 - Email 6/1/2020**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **17 - Letter 9/3/21**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **18 - Email 12/12/23**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **19 - Email 2/15/23**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **20 - Email 2/15/23**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **21 - Email 2/15/23**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**
Comment: **22 - Email 2/15/23**

File Date: **02/20/2023**
Document Name: **Supporting Exhibit**

Comment: **23 - Document Request**

File Date: **03/16/2023**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Hearing Notice**

File Date: **03/16/2023**
Document Name: **Motion for Summary Judgment**
Comment:

File Date: **03/16/2023**
Document Name: **Supporting Exhibit**
Comment: **Ex. 1 - CERTIFIED COPY - WASHINGTON COUNTY RETENTION SCHEDULE C872**

File Date: **03/16/2023**
Document Name: **Supporting Exhibit**
Comment: **Ex. 2 - CERTIFIED COPY - WASHINGTON COUNTY RETENTION SCHEDULE C1068**

File Date: **03/16/2023**
Document Name: **Supporting Exhibit**
Comment: **Ex. 3 - CERTIFIED COPY - WASHINGTON COUNTY RETENTION SCHEDULE C882**

File Date: **03/16/2023**
Document Name: **Supporting Exhibit**
Comment: **Ex. 4 - Gmail - MPIA - Letters opposing Civil War Rail Trail**

File Date: **03/16/2023**
Document Name: **Supporting Exhibit**
Comment: **Ex. 5 - Gmail - MPIA - Attached in a zip file**

File Date: **03/16/2023**
Document Name: **Supporting Exhibit**
Comment: **Ex. 6 - Gmail - MPIA - FBI COMMUNICATIONS RELATE TO CYBER SECURITY INCIDENT**

File Date: **03/16/2023**
Document Name: **Supporting Exhibit**
Comment: **Ex. 7 - Gmail - MPIA - Follow Up - Sanitary District SD-4 Keedysville:Sharpsburg - Intergovernmental Agreement**

File Date: **03/16/2023**
Document Name: **Supporting Exhibit**

Comment: **Ex. 8 - Thrust and Parry - Gmail - RE: Fwd: Re: Public information request (ethics)**

File Date: **03/16/2023**
Document Name: **Supporting Exhibit**
Comment: **Ex. 9 - KKZOOM - Gmail - MPIA - Attached in a zip file**

File Date: **03/17/2023**
Document Name: **Response/Reply**
Comment: **Supplemental Opposition to Defendants Motion for Summary Judgement**

File Date: **03/27/2023**
Document Name: **Consent Motion**
Comment: **TO CONTINUE THE APRIL 25, 2023 MOTIONS HEARING - Duplicate**

File Date: **03/27/2023**
Document Name: **Consent Motion**
Comment: **TO CONTINUE THE APRIL 25, 2023 MOTIONS HEARING**

File Date: **03/28/2023**
Document Name: **Order**
Comment: **Granted**

File Date: **03/28/2023**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Order - 16**

File Date: **03/28/2023**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Hearing Notice**

File Date: **03/31/2023**
Document Name: **Opposition**
Comment: **Opposition to Plaintiff's Motiion for Summary Judgment**

File Date: **03/31/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 1 to Opposition to Plaintiff's Motiion for Summary Judgment**

File Date: **03/31/2023**
Document Name: **Reply to Opposition**
Comment: **Reply to Def. Opp. to Plt. Motion For Summary Judgement**

File Date: **05/30/2023**
Document Name: **Line**
Comment: **Line re Exhibit 24 to the Countys MTD, MSJ**

File Date: **05/30/2023**
Document Name: **Supporting Exhibit**
Comment:

File Date: **05/31/2023**
Document Name: **Complaint - Amended**
Comment: **Amended Complaint - Washco - MPIA - Clean Copy**

File Date: **05/31/2023**
Document Name: **Supporting Document**
Comment: **Amended Complaint - Washco - MPIA - Comparison Copy**

File Date: **05/31/2023**
Document Name: **Motion - Postponement/Continuance**
Comment: **EMERGENCY MOTION TO CONTINUE THE JUNE 2, 2023 HEARING**

File Date: **05/31/2023**
Document Name: **Notice of Objection Filed**
Comment: **Objection Rule 2-517 - Defendant's Emergency Motion at Paragraph 4**

File Date: **05/31/2023**
Document Name: **Supporting Exhibit**
Comment: **Ex. 1**

File Date: **06/01/2023**
Document Name: **Order/Ruling for Postponement/Continuance Granted**
Comment: **cc:parties, eserved to counsel and Justin Holder.**

File Date: **06/01/2023**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Order for Continuance, C21CV23000016, Eserved: Justin Holder, Petitioner, and Kevin Karpinski, Counsel for Respondent.**

File Date: **06/01/2023**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Hearing Notice**

File Date: **06/15/2023**
Document Name: **Motion**
Comment: **DEFENDANTS MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT AND FOR SANCTIONS**

File Date: **06/15/2023**
Document Name: **Memorandum**
Comment: **Memorandum in Support of DEFENDANTS MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT AND FOR SANCTIONS**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 1-Response to 3rd PIA Request**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 2- Email**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 3- Public Info Request from Mr. Holder**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 4- MPIA Letter Opposing Civil War Rail Trail**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 5- Email Letters Opposing Rail Trail**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 6- Gmail Civil War Rail Trail**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 7- Email attached letter to Kevin Karpinski**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 8-Gmail Civil War Rail Trail**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 9-Email PIA Reques Rail Trail**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 10- Email to Mr Downey**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 11- PIA Request 11/24 Cybersecurity incident**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 12- PIA Request 11/24 Cybersecurity incident**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 13- Email to Wash Co Custodian Public Records**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 14- Email to Adam PIA Requests**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 15- Letter to Mr. Greivell**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 16- Email to Mr. Downey**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 17- Letter to Mr. Holder**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 18- Letter re: Destruction of Permanent Records**

File Date: **06/15/2023**

Document Name: **Supporting Exhibit**
Comment: **Exhibit 19-Letter re: Amendment Retention Schedules**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 20- Letter re: Sewer Agreements**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 21- Letter re: Sewer Agreements**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 22- Letter re: Sewer Agreements**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 23- Letter re: Sewer Agreements**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 24- Email MPIA Requests**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 25- Email re: Chip Wood Correspondence**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 26- Email Communications related to Destruction of permanent records**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 27- Email re: Destruction of Perm Records**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 28-Email re: Chip Wood Correspondence**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 29-Spreadsheet**

File Date: **06/15/2023**
Document Name: **Supporting Exhibit**
Comment: **Exhibit 30- Affidavit**

File Date: **06/29/2023**
Document Name: **Opposition**
Comment: **Opposition to Defendant Second Motion to Dismis or Summary Judgement**

File Date: **06/29/2023**
Document Name: **Supporting Exhibit**
Comment: **Ex. A through O - identification in lower right corner**

File Date: **09/06/2023**
Document Name: **Hearing Sheet**
Comment:

File Date: **09/21/2023**
Document Name: **Line**
Comment: **Striking Appearance**

File Date: **04/01/2024**
Document Name: **Line**
Comment: **Re: Request For Ruling**

File Date: **04/24/2024**
Document Name: **Line**
Comment: **Supplemental Evidence**

File Date: **04/24/2024**
Document Name: **Supporting Exhibit**
Comment: **A - PIACB23_033**

File Date: **04/24/2024**
Document Name: **Supporting Exhibit**
Comment: **B - 1061-01-24 - Final Determination (Amended)**

File Date: **06/03/2024**
Document Name: **Order**
Comment: **Defendant did comply and sanctions is denied; CC:parties**

File Date: **06/03/2024**

Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Order; C21CV2316**

File Date: **06/26/2024**
Document Name: **Deficient Filing**
Comment: **Notice of Appeal and Civil Information Report**

File Date: **06/28/2024**
Document Name: **Notice of Deficiency - Rule 20-203(d)**
Comment:

File Date: **06/28/2024**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Notice of Deficiency - 16**

File Date: **06/30/2024**
Document Name: **Notice of Appeal to ACM**
Comment: **Notice of Appeal**

File Date: **07/10/2024**
Document Name: **Transcript Cost Sheet**
Comment: **09/06/2023 Hearing**

File Date: **07/10/2024**
Document Name: **Transcript**
Comment: **09/06/2023 Hearing**

File Date: **07/24/2024**
Document Name: **Order to Proceed**
Comment:

File Date: **09/16/2024**
Document Name: **Certification**
Comment: **Original Case**

File Date: **09/16/2024**
Document Name: **Original Record Sent**
Comment: **Eserved Index to Plaintiff Eserved Counsel for Defendant**

File Date: **09/16/2024**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Appeal Index - Eserved Justin Helder & Kevin Karpinski**

Service Information

Service Type	Issued Date
Summons Issued	**01/13/2023**
Summons Issued	**01/13/2023**

This is an electronic case record. Full case information cannot be made available either because of legal restrictions on access to case records found in Maryland Rules, or because of the practical difficulties inherent in reducing a case record into an electronic format.

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Service Desk: (410) 260-1114

E-FILED; Washington Circuit Court
Docket: 5/31/2023 7:42 AM; Submission: 5/31/2023 7:42 AM
Envelope: 12905813

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

JUSTIN K. HOLDER *Plaintiff* v. WASHINGTON COUNTY BOARD OF COUNTY COMMISSIONERS, *et al.*, *Defendant(s)*	* * * * * * * * * *	CASE NO.: C-21-CV-23-000016

* *

COMPLAINT

Plaintiff Justin Kyle Holder ("Mr. Holder"), in proper person, hereby files this Complaint against Defendants WASHINGTON COUNTY BOARD OF COUNTY COMMISSIONERS and Kirk C. Downey, Esq., and in support thereof alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Mr. Holder is an adult resident of the State of Maryland.
2. Mr. Holder is an "applicant" as defined by Maryland Code Ann., General Provisions Article ("GP") § 4-101(b) since he asked Defendants to inspect certain public records, as that term is defined by GP §4-101(j).
3. Defendant WASHINGTON COUNTY BOARD OF COUNTY COMMISSIONERS (the "County") is a political subdivision as defined by GP §4-101(i).
4. Kirk C. Downey, Esq. ("Downey") is the County Attorney. At all times relevant to this Complaint, Downey has been listed as the contact for the County in the Maryland Public Information Act Manual ("MPIA Manual"). Downey is/was the official custodian, as defined by GP§4-101(i), for the public records of the County since he is an officer or employee of Defendant County who is responsible for keeping a public record whether

or not the officer or employee has physical custody and control of the public record. Under the Maryland Public Information Act, Downey, as the custodian of the public records, is/was responsible for receiving and responding on behalf of Defendant County to requests for public records made pursuant to the Maryland Public Information Act.

5. Jurisdiction is proper in the State of Maryland under MD. CODE ANN. CTS. & JUD. PROC. § 6-103 because all Defendants transact business in this State.

6. Venue is proper in the Circuit Court for Washington County, Maryland pursuant to MD. CODE ANN. CTS. & JUD. PROC. § 6-201 and 6-202 because Defendants carry on regular business in Washington County and because Mr. Holder's claim arose from acts or conduct that occurred in Washington County, Maryland. Moreover, this Court has jurisdiction over this matter pursuant to GP § 4-362 because Defendant the County is the legal custodian of the public records at issue in this lawsuit, the public records at issue in this lawsuit are located within Washington County, Defendant the County maintains its primary place of business at 100 West Washington Street, Hagerstown, MD 21740, is a legal resident of Washington County, Maryland, and is amenable to service of process in Washington County.

FACTS IN SUPPORT OF PLAINTIFF'S ALLEGATIONS

7. Mr. Holder incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully stated herein.

8. On Sat, Dec 11, 2021 at 8:43 PM **Justin Holder** <jholder2004@gmail.com> sent an email subject “MPIA - Letters opposing Civil War Rail Trail” To: "McCarty, Rachael" <rmccarty@washco-md.net> Cc: "Downey, Kirk" <kdowney@washco-md.net> requesting:

> “I was reviewing the BOCC records and found this report attached. On page 13 of the attached document:
>
> 'Question: On May 12, 2012, the County sent out **800 notification letters to owners of all properties within 500 feet of the proposed trail.** Hence, consider the response of only **80 residents who oppose** is rather miniscule compared to the 700 county residents who are in favor of the trail. Why do the preferences of 80 residents outweigh the preferences of 700 residents? Why do the preferences of 80 residents, most of whom live in south county, outweigh the preferences of 345 residents who live in south county – especially when County Planning says south county has a shortage of walking and jogging areas?'
>
> While I share Mr. Woods ambition to provide trails, I would like to better understand the opposition.
>
> I appreciate all the access to documents the County provides. I would like to review these documents in the least burdensome method possible. I would gladly stop in and scan the documents with a phone if the file is only hard copies. If by chance this file and list of 800 'interested parties,' and response is available electronically could I please obtain a copy.
>
> I appreciate all the good work everyone does at the County. Thank you kindly in advance for your assistance[,]” the (“Rail Trail” request.)

9. Mr. Holder attached to his Rail Trail request: 1) a copy of the “BOARD OF COUNTY COMMISSIONERS August 1, 2017 Agenda” at 10:20AM “CIVIL WAR RAIL TRAIL PROJECT – Chip Wood, Consultant and Dan Spedden, Hagerstown – Washington County Convention & Visitors Bureau;” and 2) a copy of the “Agenda Report Form Open Session Item **SUBJECT:** CIVIL WAR RAIL TRAIL—Appeal to Resurrect Project:

"**REPORT-IN-BRIEF:** Report requests BoCC to take a fresh look at the CWRT project that the BoCC voted to halt in July of 2012. Report was prepared utilizing County and State records, County and State policies and it provides the author's assessment of where further County and State actions are needed that will implement their policies. Reasons for BoCC action include: 1. BoCC is on record for embracing the CWRT project in March and May of 2012. 2. County Planning and Zoning policy says CWRT will reduce current County-wide deficiency of park land with walking and jogging facilities. The worst deficiency lies in south county. 3. County records show that 700 County residents support the CWRT project versus only 80 residents who oppose the project. 345 residents of south county support the project. 4. Grant funding is available from multiple state agencies and private entities. 5. $1.2 million of public monies already invested for the trail development is being wasted[,]" (the "wasted resources.")

10. On Wednesday, January 26, 2022 11:02Am Eshleman, Andrew <aeshleman@washco-md.net> sent an email subject "RE: MPIA - Letters opposing Civil War Rail Trail" to Jacobson, Kimberly D. <kjacobson@washco-md.net> explaining that: "I could load it on a flash drive. That would be several dollars for that[;]" and in a second reply 10 minutes later stating "...I'd say project information and correspondence and presentations numbers thousands of pages. It is 1 GB of data[,]" (the "Gigabyte of Data.")

11. On Thu, Nov 3, 2022 at 1:20 PM **Justin Holder** <jholder2004@gmail.com> sent an email subject "MPIA - "Attached in a zip file" to To: "Downey, Kirk" <kdowney@washco-md.net> requesting:

"I am writing to kindly request Public Information in accordance with MD.GeneralProvisionsCodeAnn.§4-101. Please provide the following records:

In referring to the email record;

'**From:** O'Neal, Joshua <joneal@washco-md.net>
Sent: Monday, August 3, 2020 4:16 PM
To: Bright, Andrew <abright@washco-md.net>
Cc: McCarty, Rachael <rmccarty@washco-md.net>
Subject: RE: 23rd(?) Public information request from Mr. Holder

16 emails fall under the parameters specified by Mr. Holder. **Attached in a zip file**. -Josh' (emphasis supplied); please provide the ("'**Attached in a zip file**'") record as it was provided in the email record *supra*.
Please provide a time and cost estimate in 10 days.

Please see ***Public Interest in Brady Evidence*** attached hereto and incorporated herein by reference[,]" (the "Zip File" request.)

12. The Zip File Maryland Public Information Request included an attached pdf document titled "THE PUBLIC INTEREST IN *BRADY* EVIDENCE" in support of the public interest of Mr. Holder's request for Public Records, specifically citing:

> "'As opposed to deflecting from his prosecutorial failure, I urge AG Frosh to 'dig a little deeper' and evaluate any other errors infringing on the rights of other Marylanders.' *Baltimore State's Attorney Marilyn Mosby*
>
> 'I think Attorney General Brian Frosh needs to speak to his office's willful decision to sit on exculpatory evidence for the last seven years,' *Baltimore State's Attorney Marilyn Mosby*
>
> 'The Attorney General has an interest in the integrity of the criminal justice system and the public's trust in that system,' *Assistant Attorney General Carrie Williams*
>
> 'Mary, if and when this matter goes to trial, please be ready to explain during your testimony why DNR feels that criminal charges are appropriate in a case where DNR cannot or will not exert its property rights in equity court. The Judge will want to know and understand that answer, because it goes to the heart of the matter. It is a real headscratcher.' *Honorable Washington County Circuit Court Judge Joseph Michael, as Deputy State's Attorney*
>
> 'An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: '**The United States wins its point whenever justice is done its citizens in the courts.**'[1] A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that

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[1] Judge Simon E. Sobeloff when Solicitor General put the idea as follows in an address before the Judicial Conference of the Fourth Circuit on June 29, 1954:
"The Solicitor General is not a neutral, he is an advocate; but an advocate for a client whose business is not merely to prevail in the instant case. My client's chief business is not to achieve victory but to establish justice. We are constantly reminded of the now classic words penned by one of my illustrious predecessors, Frederick William Lehmann, **that the Government wins its point when justice is done in its courts.**"

bears heavily on the defendant.' *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) at p. 88."

13. On Fri, Nov 11, 2022 at 7:14 AM **Kevin Karpinski** <kevin@bkcklaw.com> replied to the Zip File request by email To: Justin Holder <jholder2004@gmail.com>, "Downey, Kirk" <kdowney@washco-md.net> requesting: "Justin- Do you have time on Monday to discuss the below MPIA request? Thanks, Kevin[,]" (the "Zoom Meeting.")

14. In a Monday November 14th 2022 at 9:00AM Zoom Meeting Mr. Holder discussed the Zip File request with Kevin Karpinski, Esq. as counsel to the County and/or Downey (Mr. "Karpinski;") in conclusion Mr. Holder asked Mr. Karpinski "So you're just going to forward the [**Sent:** Monday, August 3, 2020 4:16 PM **To:** Bright, Andrew <abright@washco-md.net>] email from Josh Neal to me?" And Mr. Karpinski replied "Yes[,]" (the "November 14th agreement.")

15. As of January 11th 2023, Mr. Holder has not received a forwarded copy of the Zip File request in accordance with the November 14th agreement.

16. On Sat, Dec 10, 2022 at 1:17 PM **Justin Holder** <jholder2004@gmail.com> sent an email subject "MPIA - Follow Up - Sanitary District SD-4 Keedysville/Sharpsburg - Intergovernmental Agreement" To: "Downey, Kirk" <kdowney@washco-md.net> kindly requesting:

> Following up on "correspondence from Washington County Attorney (the "County") in response to an April 17th 2020 Maryland Public Information Act Request for 'The ordinance, charter and agreement created by the Washington county sanitary district when forced main sewer was installed in keedysville and sharpsburg in 1988.' (the 'April 17th 2020 Request') I appreciate the Search performed in response to my April 17th 2020 Request, however the County Attorney Records Retention Policies I have located on

the Maryland State Archives and filed with the Maryland Department of General Services represent that the following records are **PERMANENTLY RETAINED:**

2	Permits: sewer connection permits	Permanent. Transfer periodically to the MD State Archives

DEPARTMENT OF GENERAL SERVICES RECORDS MANAGEMENT DIVISION **RECORDS RETENTION AND DISPOSAL SCHEDULE** (CONTINUATION SHEET)	**Schedule No.** C882 **Page** 2 **of** 2

Item No	Description	Retention
5	Sanitary district files -contains but not limited to: correspondence, pump station and WWTF information transmittal forms, equipment warranty and certification forms, site drawings, brochures, catalogs, plans, agreement for engineering services, minutes of progress meetings, work plan/approvals	Screen annually. Destroy material having no further administrative, fiscal, legal or operational value. Retain permanently any material that serves to document the origin, development and accomplishments of the department. Transfer periodically to the Maryland Archives.
17	Subject files by sanitary district -contains but not limited to: correspondence, contract change orders, permits, final tabulation listings, mileage cost, equipment rental cost, inspector's report, notice of public hearings, hearing testimony, hearing procedures	Screen annually. Destroy material having no further administrative, fiscal, legal or operational value. Retain permanently any material that serves to document the origin, development and accomplishments of the department. Transfer periodically to the Maryland Archives.

DEPARTMENT OF GENERAL SERVICES RECORDS MANAGEMENT DIVISION **RECORDS RETENTION AND DISPOSAL SCHEDULE**	**Schedule No.** C872 **Page** 1 **of** 4
Agency Washington County	**Division/Unit** Finance/Water and Sewage

Item No	Description	Retention
1	Billing registers -contains but not limited to: past due bills, invoice update edit list, billing registers, delinquent proof list, consumption proof list, syscon conversion, date and time report, meter readings, invoice copies	Retain for three (3) years and until all audit requirements have been fulfilled, then destroy
2	Lab reports: water analysis - water samples, lab analysis report, wastewater/streams analysis, discharge reports	Retain for five (10) years and until all audit requirements have been fulfilled, then destroy
3	Agreements for service, pipeline crossing, site plans, agreements between Washington Co. and sub division/town for water and sewage services, amendments, funding agreements, agreements for architectural services	Permanent. Transfer periodically to MD State Archives

;(the "Permanent Records.") I am writing today to follow up with the Honorable Custodian and request a copy of the Permanent Records; or

In the Alternative, to reduce any/all burden and expense of the County in responding, I would like to visit the Williamsport location and inspect and photograph the Permanent Records.

Please let me know the County's preference.

Please have a wonderful week[,]" (the "Permanent Records" request.)

17. Applicant has made dozens of Public Information Act request over the proceeding 2 years attempting to target his search to obtain a copy or printout of the Permanent Records; Downey opining "our current thrust and parry appears unproductive to both parties" in a Nov 25, 2020, 10:45 PM email, (the "thrust and parry" for Permanent Records.)

18. On Wed, Apr 26, 2023 at 2:03 PM **Justin Holder** <jholder2004@gmail.com> sent an email subject "Re: 342-102, PIA Request regarding 'Washington County Sewer Agreements – Maugensville SUBDISTRICT'" To: "Downey, Kirk" <kdowney@washco-md.net> Cc: "Desaulniers, Kendall A." <kdesaulniers@washco-md.net>, "Jacobson, Kimberly D." <kjacobson@washco-md.net>, Kevin Karpinski <kevin@bkcklaw.com>, Jason Parkins <jparkins@bkcklaw.com>, Brenda Pizanis <BPizanis@bkcklaw.com> kindly requesting:

"Dear Mr. Downey,
I am writing to request to inspect a public record in accordance with Md. Ann. Code GP § 4-101 et seq.

I would like to inspect, photograph or copy the 'agreements' to operate, construct and maintain a sewer/water system made between the Washington County Government the and/or Washington County Sanitary District and municipalities/political bodies representing:

Subdistrict 15 Maugensville/orchard Hills;
signed and sealed on or before December 31st 1993.

Please note the Washington County Attorney represents to the Maryland Dept. of General Services vis a vis Retention Schedule C872, C882 and C1068 that the aforementioned 'agreements' are permanently retained records of the taxpayers of this County. See Exhibits 1 through 3 attached hereto and incorporated herein by reference.

Please provide a time and cost, or reason for any delay within 10 working days in accordance with Md. Ann. Code GP § 4-203.

Please have a wonderful weekend.

Respectfully,

Justin Holder", (the "Maugansville sewer agreement" request).

19. The County has denied Mr. Holder the right to inspect or photocopy public records described in the Maugansville sewer agreement request, baldly alleging: Mr. Holder is "attempting to individually request each of the fifteen agreements you [Mr. holder] previously requested from the County in attempt to circumvent the assessment and payment of the [$7082.20] fee associated with the search of those records previously identified by the County." The County lacks proper foundation to baldly allege Mr. Holder is "individually request[ing] each of the fifteen agreements" because Mr. Holder has not made fifteen separate requests for all 15 sewer agreements the County alleges it has in its custody.

20. The County has arbitrarily and capriciously ignored Mr. Holder's good faith efforts to narrow his search in its denial of Mr. Holder's right to inspect or photocopy public records described in the Maugansville sewer agreement request.

21. The County did not write to Mr. Holder in 10 days in accordance with GP 4-203 advising Mr. Holder of the $7082.20 fee related to Mr. Holder's right to inspect or photocopy public records described in the Maugansville sewer agreement request.

22. The public records responsive to the Maugansville sewer agreement request can not be privileged, confidential or otherwise exempted from public disclosure because the County represents that they are public records required to be kept permanently to Maryland Dept. of General Services and the public 'writ large.

23. MD. Environment Code Ann. § 9-503 (2021) provides:

> " (a) Each county ***shall*** have a county plan or a plan with adjoining counties that: (1) Is approved by the Department; (2) Covers at least the 10-year period next following adoption by the county governing body; and (3) Deals with: (ii) Sewerage systems;"
>
> " (b) Except as provided in § 9-515 of this subtitle, each county governing body ***shall*** review its county plan at least once every 3 years in accordance with a schedule set by the Department."; and the County responded:

24. On November 21, 2020 Mr. Holder made a public information request to the County:

> "Please provide all documents, correspondence, agreements, resolutions, and modification
> sent or submitted to local municipalies's and MDE and or the health department
> that were
>
> produced, required or initiated
> in preparation or conduction of the trennial review of the comprehensive plans, specifically sewage and water utility available and priority (s1/s3/s5/s7 or w1/w3/w5/w7 zones)
> For the 3 most recent trennial reviews.";
>
> and B. Andrew Bright, Esq., the Assistant County Attorney, respresented:

"Having discussed the matter with the Director of Planning, and with the Interim Director of Environmental Management, it does not appear that a triennial review has been conducted in the period you have referenced. Thus, there are no known records responsive to your request in the possession of the County."

25. The United States Clean Water Act prohibits anybody from discharging "pollutants" through a "point source" into a "water of the United States" unless they have an NPDES (National Pollutant Discharge Elimination System) permit. The permit will contain limits on what you can discharge, monitoring and reporting requirements, and other provisions to ensure that the discharge does not hurt water quality or people's health. In essence, the permit translates general requirements of the Clean Water Act into specific provisions tailored to the operations of each person discharging pollutants.

26. The 4-1 sanitary district is serviced by the Antietam Wastewater treatment plant designated with NPDES Permit MD0062308, No. 13-DP-2354.

27. NPDES MD0062308, No. 13-DP-2354 § III(C)(1) "GENERAL CONDITIONS" states:

"Reporting Requirements

Pursuant to Environment Article Sub title 9-331.1, the permittee must report sanitary sewer overflows (SSOs) which result in the direct or potential discharge of raw or diluted sewage into the surface waters or ground waters of the State to the Water and Science Administration's Compliance Program. Concurrently, the permittee shall also notify the local health department. Such reports must be made via telephone as soon as practicable, but no later than 24 hours after the time that the permittee became aware of the event. Reportable SSOs include, but are not limited to, overflows into the surface of the ground, into waterways, storm drains, ditches or other manmade or natural drainage conveyances to surface or ground waters which are reasonably likely to reach waters of the State. Overflows that are wholly contained within buildings and not likely to discharge to waterways need not be reported. Treatment plant bypasses shall be reported under General Condition III.B.1. Telephone reports shall be made to (410) 537-3510 on weekdays between 8:00 a. m. and 5:00 p.m. After hours telephone notification shall be made to emergency response number at (866) 633-4686.

When the incident is reported to the Department, the following information needs to be included:

a. the location of the overflow, including city or county,

b. the name of the receiving water, if applicable;

c. an estimate of the volume of sewage discharged;

d. a description of the sewer system or treatment plant component from which the overflow was released (such as manhole, crack in pipe, pumping station wet well or constructed overflow pipe);

e. an estimate of the overflow's impact upon public health and to waters of the State;

f. the cause or suspected cause of the overflow;

g. the estimated date and time when the overflow began and stopped or the anticipated time the overflow is expected to continue;

h. if known at the time of reporting, the steps taken or planned to reduce, eliminate and prevent reoccurrence of the overflow and a schedule of major milestones for those steps; (if unknown at the time the telephone report is made, the steps must be included in the written reports submitted under general conditions III.C.2).

i. if known at the time of reporting, measures taken or planned to mitigate the adverse impact of the overflow and a schedule of major milestones for those steps (if unknown at the time the telephone report is made, the steps must be included in the written reports submitted under general conditions III.C.2); and

j. whether there has already been a notification to the public and other City or County Agencies or Departments and how notification was done.", (the "NPDES reporting requirements").

28. NPDES MD0062308, No. 13-DP-2354 § IV "CIVIL AND CRIMINAL PENALTIES ":

states:

A. "Civil Penalties for Violations of Permit Conditions
In addition to civil penalties for violations of State water pollution control laws set forth in Section 9-342 of the Environment Article,

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Annotated Code of Maryland, the Clean Water Act provides that any person who violates Section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act or in a permit issued under Section 404 of the Act, is subject to a civil penalty not to exceed $37,500 per day for each violation.

B. Criminal Penalties for Violations of Permit Conditions
In addition to criminal penalties for violations of State water pollution control laws set forth in Section 9-343 of the Environment Article, Annotated Code of Maryland, the Clean Water Act provides that:

1. any person who negligently violates Section 301, 302, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act, or in a permit issued under Section 404 of the Act, is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both.

2. any person who knowingly violates Section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act, or in a permit issued under Section 404 of the Act, is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than three years, or by both.

3. any person who knowingly violates Section 301, 302, 306, 307, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act, or in a permit issued under Section 404 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, is subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both.

4. ***any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under the Act, is subject to a fine of not more than $10,000 or by imprisonment for not more than***

two years, or by both.", (emphasis added) (the "NPDES penalties").

29. Clean water is in the public interest and compliance with the laws governing clean water are of the utmost public import. Mr. Holder and the public have substantial and/or imminent interest in determining if the Town of Keedysville, Maryland, Washington County, Maryland government, and/or all of the aforementioned municipalities administrators/employees/officials/legislators and/or MDE agents/officials/employees, responsible for: "certification in any application, record, report, plan, or other document filed or required to be maintained under the Act" knowingly, willfully and intentionally (or worse) made false material statement(s) and representation(s) in "application, record, report, plan, or other document filed or required to be maintained under the Act", remained deliberately indifferent (or worse) to the NPDES reporting requirements and are subject to NPDES penalties, (the "public interest" in disclosure).

30. On Mon, Dec 12, 2022 at 9:26 AM **Justin Holder** <jholder2004@gmail.com> sent an email subject "MPIA - FBI COMMUNICATIONS RELATE TO CYBER SECURITY INCIDENT" to To: "Downey, Kirk" <kdowney@washco-md.net> requesting:

> "Dear Washington County Custodian of Public Records:
>
> I am writing to kindly request Public Information in accordance with MD. General Provisions Code Ann. § 4-101. Please provide the following records: Any and All Communications by email/phone/social media/in person/mail/text (the 'Communications') with any person/entity/agent of the Federal Bureau of Investigation and/or United States Department of Justice and/or the National Security Administration (the 'US GOVERNMENT') relating to any electronic data held/stored/kept on any county electronic data computer/server/drive/cloud/storage (the 'data') and/or any financial/bank/investment/sweep/savings/treasury accounts that were stolen/compromised/looted/hacked/lost (the 'money') that was associated/involved/included/related to the 'cybersecurity incident' as described in a [November 25th 2022] Facebook post...(the 'ransomware'); and

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the Public record that would inform/describe/index/delineate the Washington County Government/Attorney/Sheriff/Administrator/ employee/agent (the 'County') DECLINED/REFUSED/DENIED any and/or all assistance and/or help from the US GOVERNMENT in investigating/ recovering/tracking/finding ('Recovering') the County's money and data during and/or after the ransomware and/or cybersecurity incident.

In short I am requesting any evidence or communications that the County **DECLINED/REFUSED/DENIED** *the assistance and/or help of the US GOVERNMENT IN recovering the money and/or data; I do not want any communications in which the County accepted the assistance of the US GOVERNMENT in Recovering the data and money.* (Emphasis in Original)

Please provide a time and cost estimate in 10 days.

PUBLIC INTEREST IN DISCLOSURE

I would please ask that the custodian carefully consider the balance and advantage of transparency of full release of all information (except the actual data itself). The records of the Washington County Sheriff and/or other County governmental units contain sensitive and potential private data about certain residents, persons and their businesses that could be used by bad actors to gain access to their data and/or impersonate them. The taxpayers of this County have invested millions of dollars in our network and computer systems and we need to know our hard earned tax money is secure and going to the needs of the citizens of this County. The Ransomware and cyber security incident happened 3 weeks prior and the County has not updated its citizens on the extent of the nature of the breach, nor the County's efforts to repair the Network.

To the extent the COunty [sic] has declined the assistance and/or help of the US GOVERNMENT in recovering the data and money; the citizens of this County must be informed why that policy is useful to them.

I have been requesting the County's email retention and data backup policies for over 1 year out of great concern that in fact the Counties tendency to lose records and data would and now is, potentially [] a systemic problem affecting the taxpayer resources of Washington County. This concern is greatly amplified by the public record thus far which reflects a County that is unwilling or unable to produce any formal written policy on data retention, cloud backup or cyber security.

Thank you in advance for all the hard work the County and its custodian does for our wonderful County and residents[,]" (the "FBI Communications.")

E. 029

31. The County and Downey requested on August 19th 2022: “Moreover, the PIA is generally an ‘iterative process.’ Although [Mr. Holder is] under no duty to contact the County regarding []his request, he did not do [so] and instead [filed suit], at a time when the County's response to said request was merely two days overdue[,]” (the requested “reminder.”)

32. On Sun, Jan 8, 2023 at 11:39 AM **Justin Holder** <jholder2004@gmail.com> sent an reminder email subject “Friendly Reminder on MPIA request(s) outstanding” To: "Downey, Kirk" <kdowney@washco-md.net> kindly reminding Downey and the County of their Statutory obligations in accordance with Maryland Public Information Act rated to the Rail Trail, Zip File, Permanent Records and FBI Communications request; and “PUBLIC INTEREST IN the 4 unresolved requests:

> The Public does not want to interfere with a cybersecurity investigation, but it is peculiar why the County would decline assistance from the United States Government.
>
> On April 17th 2020 I requested the Sewer Agreement between Keedysville and Washington County for SD4-1, which after 50 plus requests the County has just refused to produce and represent they do not have, despite the Permanent Retention policy. These agreements must be of grave public importance, and the Counties reluctance to turn it over is quite peculiar.
>
> The Aug. 3rd [email] would take less than 1 minute to complete, as would the 1 gigabyte of data on the Letters opposing Civil War Rail Trail. The failure to release these records defies logic and reason.
>
> The Public is concerned why so many resources are being devoted to the withholding of records the undersigned applicant is entitled to as a matter of law[,]” (the “peculiar behavior.”)

33. MD. General Provisions Code Ann. § 4-203 (2021) “(a) (1) Except as provided in paragraph (2) of this subsection, the custodian shall grant or deny the application promptly, **but not more than 30 days after receiving the application.**”;

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34. MD. General Provisions Code Ann. § 4-203 (2021) "(b) (1) A custodian who approves the application shall produce the public record immediately or within a reasonable period that is needed to retrieve the public record, **but not more than 30 days after receipt of the application.**";

35. MD. General Provisions Code Ann. § 4-203 (2021) "(b) (2) If the **custodian reasonably believes that it will take more than 10 working days to produce the public record**, the custodian **shall indicate in writing or by electronic mail within 10 working days after receipt of the request:** (i) the amount of time that the custodian anticipates it will take to produce the public record; (ii) an estimate of the range of fees that may be charged to comply with the request for public records; and (iii) the reason for the delay."

36. MD. General Provisions Code Ann. § 4-203 (2021) "(b) (3) **Failure to produce the public record in accordance with this subsection constitutes a denial of an application** that may not be considered the result of a bona fide dispute unless the custodian has complied with paragraph (2) of this subsection and is working with the applicant in good faith;" and

37. MD. General Provisions Code Ann. § 4-203 (2021) "(c)(1) A custodian who denies the application shall: (i) **within 10 working days**, give the applicant a written statement that gives: 1. the reasons for the denial; 2. if inspection is denied under § 4–343 of this title: A. a brief explanation of why the denial is necessary; and B. an explanation of why redacting information would not address the reasons for the denial; 3. the legal authority for the denial; 4. without disclosing the protected information, a brief

description of the undisclosed record that will enable the applicant to assess the applicability of the legal authority for the denial; and 5. notice of the remedies under this title for review of the denial; and (ii) **allow inspection of any part of the record that is subject to inspection**. (2) A custodian may not ignore an application to inspect public records on the grounds that the application was intended for purposes of harassment."

38. As of January 11th 2023 Mr. Holder's application to inspect and/or copy public record(s) described in the Zip File Maryland Public Information Request(s) has not been granted in accordance with the November 14th agreement.

39. As of January 11th 2023 Mr. Holder's application to inspect and/or copy public record(s) described in the Rail Trail Maryland Public Information Request(s) was not granted in 30 days, nor was Mr. Holder provided a copy "loaded on a flash drive" of the 1 Gigabyte of data he requested to inspect.

40. As of January 11th 2023 Mr. Holder has not received any response whatsoever to the Permanent Records and FBI Communications Maryland Public Information Request(s).

41. As of January 11th 2023 Downey and the County have not asserted that the public records described in the Rail Trail, Zip File, Permanent Records and FBI Communications Maryland Public Information Request(s) were confidential, contrary to State/Federal statute, not allowed by the rules of the Court of Appeals or Order of a court of record.

E. 032

42. As of January 11th 2023 Downey and the County have not asserted that the public records described in the Rail Trail, Permanent Records and FBI Communications Maryland Public Information Request(s) were privileged.[2]

43. As of January 11th 2023 Downey and the County have not asserted that the public records described in the Rail Trail, Zip File, Permanent Records and FBI Communications Maryland Public Information Request(s) required denial in accordance with MD. General Provisions Code Ann. §§ 4-304 - 41.

44. As of January 11th 2023 Downey and the County have not asserted that inspection of a part of a public record(s) described in the Rail Trail, Zip File, Permanent Records and FBI Communications Maryland Public Information Request(s) by the applicant would be contrary to the public interest in accordance with MD. General Provisions Code Ann. §§ 4-343 - 56.

45. As of January 11th 2023 Downey and the County have not petitioned this court for an order to continue the denial of a public record(s) described in the Rail Trail, Zip File, Permanent Records and FBI Communications Maryland Public Information Request(s) asserting disclosure of the public records the applicant requested inspection of would be contrary to the public interest in accordance with MD. General Provisions Code Ann. § 4 - 358.

46. Downey and the County "willingly" did not grant the Rail Trail, Zip File, Permanent Records and FBI Communications Maryland Public Information Request(s) within 30

[2] At one point the County did protest the Zip File request, but has since conceded.

days of receiving the applications; Downey and the County "willingly" did not comply with MD. General Provisions Code Ann. § 4-203 (2021)(b)(2); Downey and the County "knowing" the law are NOT working with the applicant in good faith; and Downey and the County "knowing" the law "willfully" failed to produce the public record in accordance with MD. General Provisions Code Ann. § 4-203 (2021) (b) (3) in 30 days which constitutes a denial of an application under clear Maryland Law, (the "knowingly and willfully" denied requests.)

47. Downey and/or the County after being served with a complaint in the past have produced some but not all of the records requested in theMaryland Public Information Request(s), and there is a casual nexus between prosecution of the suit and release of the information requested, (the "crystallized policy.")

48. (The County's "crystalized policy") is "a practice of unjustified delay by means of an initial denial followed by the eventual release of the requested document, resulting in financial injury to [Applicant]" *Payne Enter., Inc. v. United States*, 837 F.2d 486, 490-91 (D.C.Cir.1988).

49. The County's crystalized policy is a hardship on Applicant because "[Mr. Holder is] indisputably [a] frequent [MPIA] requester[], whose daily conduct and decision-making [is] affected by the standards at issue" *Better Government Ass'n v. Department of State*, 780 F.2d 86 (D.C. Cir. 1986).

50. Mr. Holder has substantially prevailed and is eligible for an award of reasonable fees and cost as the *Kline v. Fuller*, 496 A.2d 325, 64 Md. App. 375 (1985) Court has provided:

> "Based on our analysis of the Md. Act and case law pertaining to the federal FOIA, we believe that certain principles have been established in determining whether the threshold of substantial prevailance has been met. Although an actual judgment in claimant's favor is not required, ***it must be demonstrated that prosecution of the lawsuit could reasonably be regarded as having been necessary in order to gain release of the information and that there was a causal nexus between the prosecution of the suit and the agency's surrender of the requested information.*** Furthermore, it is not necessary for a litigant to recover all the documents at issue, but rather key documents. Once the court determines that the complainant has substantially prevailed, that litigant becomes "eligible" but not "entitled" to an award of reasonable attorney fees and costs." (Emphasis Added)

51. As of January 11th, 2023 Downey or the County have not indicated in writing or by electronic mail within 10 working days after receipt of the Rail Trail, Zip File, Permanent Records and FBI Communications request(s): the amount of time that the custodian anticipates it will take to produce the public record; an estimate of the range of fees that may be charged to comply with the request for public records; and/or the reason for the delay in accordance with MD. General Provisions Code Ann. § 4-203(b)(2).

52. Mr. Holder's reminder to Downey and the County that their peculiar behavior, thrust and parry, breach of the November 14th agreement and crystalized policy of knowingly and willfully denying the applicant: 1) the Gigabyte of Data regarding wasted resources, 2) Permanent Records, 3) FBI communications and 4) the Zip File; illustrates "the urgency of establishing a rule of future conduct in matters of important public concern is imperative and manifest...if the public interest clearly will be hurt if the question is not immediately decided, if the matter involved is likely to recur frequently, and its recurrence will involve a relationship between government and its citizens, or a duty of government..." *Lloyd v. Supervisors of Elections*, 111 A.2d 379, 206 Md. 36 (1954).

VIOLATION OF THE MARYLAND PUBLIC INFORMATION ACT ("MD PIA")

53. Mr. Holder incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully stated herein.

54. Mr. Holder brings this action to enjoin Defendant County from unlawfully continuing to withhold public records and in order to better inform a vigorous public debate (a debate which has been shrouded in secrecy), and to vindicate the Maryland Public Information Act's guarantee of open, honest and transparent governance. All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. See GP § 4-103(a). To carry out these rights, the Maryland General Provisions shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person that requests the inspection. See GP § 4-103(b).

55. Defendant County is a County Governmental Unit and Defendant Downey is a custodian, and as such, are governed by the public disclosure requirements of the Maryland Public Information Act. Except as otherwise provided by law, a custodian shall allow a person or governmental unit to inspect any public record at any reasonable time. GP § 4-201(a).

56. Defendants' denial of Mr. Holder's request to inspect records did not indicate that the denial was made only after careful consideration to the public interest involved.

57. Defendants' denial of Mr. Holder's request to inspect records did not carefully balance the possible consequences of disclosure against the public interest in favor of disclosure.

58. Defendants did not assert the public record is priveledge or confidential in accordance with MD. General Provisions Code Ann. § 4-301(a)(1).

59. Defendants' denial of Mr. Holder's request to inspect records neither provides Mr. Holder with a brief explanation of why the denial is necessary nor an explanation of why redacting information would not address the reasons for the denial.

60. Defendants did not assert inspection of the public record would be contrary to a State or Federal Statute in accordance with MD. General Provisions Code Ann. § 4-301(a)(2).

61. Defendants did not assert inspection of the public record would be contrary to the rules adopted by the Court of Appeals or an order of a court of record in accordance with MD. General Provisions Code Ann. § 4-301(a)(2).

62. Defendants violated Mr. Holder's right "to have access to information about the affairs of government and the official acts of public officials and employees." GP § 4-103(a).

63. Defendants violated the Maryland Public Information Act by refusing to permit Mr. Holder "to inspect any public record at any reasonable time." GP § 4-201(a).

64. There is no statutory exemption under the Maryland Public Information Act, or other law, that allows the Defendants to deny Mr. Holder's requests for inspection of public records or to deny Mr. Holder a copy, printout, or photograph of a public record.

65. Pursuant to GP §4-362(b), Defendants have "the burden of sustaining a decision to deny inspection of a public record" or to "deny [Mr. Holder] a copy, printout, or photograph of a public record." Defendants cannot sustain its/his burden because its/his decision to deny Mr. Holder's right to inspect the requested documentary materials is unlawful.

66. Defendants knowingly and willfully failed to disclose or fully to disclose a public record that Mr. Holder was entitled to inspect under the Maryland Public Information Act.

67. After temporarily denying Mr. Holder inspection of a public record, Defendant Downey failed to petition this court for an order to continue the denial.

68. Defendants knowingly and willfully failed to provide a copy, printout, or photograph of a public record that Mr. Holder requested under § 4-205 of the Maryland Public Information Act.

WHEREFORE, Mr. Holder respectfully requests that this Court:

A. Assume jurisdiction over this matter pursuant to GP § 4-362;

B. Give this matter "precedence on the docket", a hearing "at the earliest practicable date" and expedite this matter "in Every way" pursuant to GP § 4-362(c)(1)(i)-(iii);

C. Enjoin Defendants County and Downey from: (l) withholding the public records requested by Mr. Holder; or (2) withholding a copy, printout, or photograph of the public records requested by Mr. Holder;

D. Issue an order for the production of the public record(s) or a copy, printout, or photograph of the public record that was withheld from Mr. Holder;

E. Order Defendants to waive all fees associated with disclosing and providing the requested records to Mr. Holder;

F. Order Defendants to fully comply with the Maryland Public Information Act in regards to future requests from Plaintiff Justin Kyle Holder;

G. Award Mr. Holder statutory damages not to exceed $1,000.00;

H. Award Mr. Holder actual damages that this court considers appropriate since Defendant(s) knowingly and willfully failed to disclose or fully to disclose a public

E. 038

record that Mr. Holder was entitled to inspect under the Maryland Public Information Act;

I. Award Mr. Holder actual damages that this court considers appropriate since Defendant(s) knowingly and willfully failed to provide a copy, printout, or photograph of a public record that Mr. Holder requested under § 4-205 of the Maryland Public Information Act;

J. Award Mr. Holder actual damages against Defendant(s) Downey and County that the court considers appropriate for temporarily denying Mr. Holder inspection of a public record without petitioning this court for an order to continue the denial;

K. Find that Defendant(s) Downey and County acted arbitrarily or capriciously in withholding the public record or the copy, printout, or photograph of the public record, and send a certified copy of its finding to the appointing authority of the custodian;

L. Order that Mr. Holder has "substantially prevailed" in this action, award Mr. Holder litigation costs and reasonable fees reasonably incurred in this action, as provided by GP § 4-362(g), and allow Mr. Holder thirty (30) days to submit fees and costs application to this Court; and/or

M. Grant any other relief this Court deems just and appropriate.

Respectfully submitted,

Justin K. Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, Maryland 21782
(240) 356-2008

E. 039

CERTIFICATE REGARDING RESTRICTED INFORMATION

I HEREBY CERTIFY that this document does not contain any restricted information.

Justin K. Holder, *Pro Se*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of May, 2023, a copy of the foregoing AMENDED COMPLAINT was served via the MDEC system and/or US Mail, to all parties entitled to service thereof.

Justin K. Holder, *Pro Se*

E. 040

E-FILED; Washington Circuit Court
Docket: 5/31/2023 7:42 AM; Submission: 5/31/2023 7:42 AM
Envelope: 12905813

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

JUSTIN K. HOLDER	*	
	*	
Plaintiff	*	
v.	*	
	*	CASE NO.: C-21-CV-23-000016
WASHINGTON COUNTY BOARD OF COUNTY COMMISSIONERS, *et al.*,	*	
	*	
	*	
Defendant(s)	*	
	*	

* *

COMPLAINT

Plaintiff Justin Kyle Holder ("Mr. Holder"), in proper person, hereby files this Complaint against Defendants WASHINGTON COUNTY BOARD OF COUNTY COMMISSIONERS and Kirk C. Downey, Esq., and in support thereof alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Mr. Holder is an adult resident of the State of Maryland.
2. Mr. Holder is an "applicant" as defined by Maryland Code Ann., General Provisions Article ("GP") § 4-101(b) since he asked Defendants to inspect certain public records, as that term is defined by GP §4-101(j).
3. Defendant WASHINGTON COUNTY BOARD OF COUNTY COMMISSIONERS (the "County") is a political subdivision as defined by GP §4-101(i).
4. Kirk C. Downey, Esq. ("Downey") is the County Attorney. At all times relevant to this Complaint, Downey has been listed as the contact for the County in the Maryland Public Information Act Manual ("MPIA Manual"). Downey is/was the official custodian, as defined by GP§4-101(i), for the public records of the County since he is an officer or employee of Defendant County who is responsible for keeping a public record whether

or not the officer or employee has physical custody and control of the public record. Under the Maryland Public Information Act, Downey, as the custodian of the public records, is/was responsible for receiving and responding on behalf of Defendant County to requests for public records made pursuant to the Maryland Public Information Act.

5. Jurisdiction is proper in the State of Maryland under MD. CODE ANN. CTS. & JUD. PROC. § 6-103 because all Defendants transact business in this State.

6. Venue is proper in the Circuit Court for Washington County, Maryland pursuant to MD. CODE ANN. CTS. & JUD. PROC. § 6-201 and 6-202 because Defendants carry on regular business in Washington County and because Mr. Holder's claim arose from acts or conduct that occurred in Washington County, Maryland. Moreover, this Court has jurisdiction over this matter pursuant to GP § 4-362 because Defendant the County is the legal custodian of the public records at issue in this lawsuit, the public records at issue in this lawsuit are located within Washington County, Defendant the County maintains its primary place of business at 100 West Washington Street, Hagerstown, MD 21740, is a legal resident of Washington County, Maryland, and is amenable to service of process in Washington County.

FACTS IN SUPPORT OF PLAINTIFF'S ALLEGATIONS

7. Mr. Holder incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully stated herein.

8. On Sat, Dec 11, 2021 at 8:43 PM **Justin Holder** <jholder2004@gmail.com> sent an email subject “MPIA - Letters opposing Civil War Rail Trail” To: "McCarty, Rachael" <rmccarty@washco-md.net> Cc: "Downey, Kirk" <kdowney@washco-md.net> requesting:

> “I was reviewing the BOCC records and found this report attached. On page 13 of the attached document:
>
> 'Question: On May 12, 2012, the County sent out **800 notification letters to owners of all properties within 500 feet of the proposed trail.** Hence, consider the response of only **80 residents who oppose** is rather miniscule compared to the 700 county residents who are in favor of the trail. Why do the preferences of 80 residents outweigh the preferences of 700 residents? Why do the preferences of 80 residents, most of whom live in south county, outweigh the preferences of 345 residents who live in south county – especially when County Planning says south county has a shortage of walking and jogging areas?'
>
> While I share Mr. Woods ambition to provide trails, I would like to better understand the opposition.
>
> I appreciate all the access to documents the County provides. I would like to review these documents in the least burdensome method possible. I would gladly stop in and scan the documents with a phone if the file is only hard copies. If by chance this file and list of 800 'interested parties,' and response is available electronically could I please obtain a copy.
>
> I appreciate all the good work everyone does at the County. Thank you kindly in advance for your assistance[,]” the (“Rail Trail” request.)

9. Mr. Holder attached to his Rail Trail request: 1) a copy of the “BOARD OF COUNTY COMMISSIONERS August 1, 2017 Agenda” at 10:20AM “CIVIL WAR RAIL TRAIL PROJECT – Chip Wood, Consultant and Dan Spedden, Hagerstown – Washington County Convention & Visitors Bureau;” and 2) a copy of the “Agenda Report Form Open Session Item **SUBJECT:** CIVIL WAR RAIL TRAIL—Appeal to Resurrect Project:

"**REPORT-IN-BRIEF:** Report requests BoCC to take a fresh look at the CWRT project that the BoCC voted to halt in July of 2012. Report was prepared utilizing County and State records, County and State policies and it provides the author's assessment of where further County and State actions are needed that will implement their policies. Reasons for BoCC action include: 1. BoCC is on record for embracing the CWRT project in March and May of 2012. 2. County Planning and Zoning policy says CWRT will reduce current County-wide deficiency of park land with walking and jogging facilities. The worst deficiency lies in south county. 3. County records show that 700 County residents support the CWRT project versus only 80 residents who oppose the project. 345 residents of south county support the project. 4. Grant funding is available from multiple state agencies and private entities. 5. $1.2 million of public monies already invested for the trail development is being wasted[,]" (the "wasted resources.")

10. On Wednesday, January 26, 2022 11:02Am Eshleman, Andrew <aeshleman@washco-md.net> sent an email subject "RE: MPIA - Letters opposing Civil War Rail Trail" to Jacobson, Kimberly D. <kjacobson@washco-md.net> explaining that: "I could load it on a flash drive. That would be several dollars for that[;]" and in a second reply 10 minutes later stating "...I'd say project information and correspondence and presentations numbers thousands of pages. It is 1 GB of data[,]" (the "Gigabyte of Data.")

11. On Thu, Nov 3, 2022 at 1:20 PM **Justin Holder** <jholder2004@gmail.com> sent an email subject "MPIA - "Attached in a zip file" to To: "Downey, Kirk" <kdowney@washco-md.net> requesting:

"I am writing to kindly request Public Information in accordance with MD.GeneralProvisionsCodeAnn.§4-101. Please provide the following records:

In referring to the email record;

'**From:** O'Neal, Joshua <joneal@washco-md.net>
Sent: Monday, August 3, 2020 4:16 PM
To: Bright, Andrew <abright@washco-md.net>
Cc: McCarty, Rachael <rmccarty@washco-md.net>
Subject: RE: 23rd(?) Public information request from Mr. Holder

16 emails fall under the parameters specified by Mr. Holder. **Attached in a zip file**. -Josh' (emphasis supplied); please provide the ("'**Attached in a zip file**'") record as it was provided in the email record *supra*.
Please provide a time and cost estimate in 10 days.

Please see ***Public Interest in Brady Evidence*** attached hereto and incorporated herein by reference[,]" (the "Zip File" request.)

12. The Zip File Maryland Public Information Request included an attached pdf document titled "THE PUBLIC INTEREST IN *BRADY* EVIDENCE" in support of the public interest of Mr. Holder's request for Public Records, specifically citing:

> "'As opposed to deflecting from his prosecutorial failure, I urge AG Frosh to 'dig a little deeper' and evaluate any other errors infringing on the rights of other Marylanders.' *Baltimore State's Attorney Marilyn Mosby*
>
> 'I think Attorney General Brian Frosh needs to speak to his office's willful decision to sit on exculpatory evidence for the last seven years,' *Baltimore State's Attorney Marilyn Mosby*
>
> 'The Attorney General has an interest in the integrity of the criminal justice system and the public's trust in that system,' *Assistant Attorney General Carrie Williams*
>
> 'Mary, if and when this matter goes to trial, please be ready to explain during your testimony why DNR feels that criminal charges are appropriate in a case where DNR cannot or will not exert its property rights in equity court. The Judge will want to know and understand that answer, because it goes to the heart of the matter. It is a real headscratcher.' *Honorable Washington County Circuit Court Judge Joseph Michael, as Deputy State's Attorney*
>
> 'An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: '**The United States wins its point whenever justice is done its citizens in the courts.**'[1] A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that

---

[1] Judge Simon E. Sobeloff when Solicitor General put the idea as follows in an address before the Judicial Conference of the Fourth Circuit on June 29, 1954:
"The Solicitor General is not a neutral, he is an advocate; but an advocate for a client whose business is not merely to prevail in the instant case. My client's chief business is not to achieve victory but to establish justice. We are constantly reminded of the now classic words penned by one of my illustrious predecessors, Frederick William Lehmann, **that the Government wins its point when justice is done in its courts.**"

bears heavily on the defendant.' *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) at p. 88."

13. On Fri, Nov 11, 2022 at 7:14 AM **Kevin Karpinski** <kevin@bkcklaw.com> replied to the Zip File request by email To: Justin Holder <jholder2004@gmail.com>, "Downey, Kirk" <kdowney@washco-md.net> requesting: "Justin- Do you have time on Monday to discuss the below MPIA request? Thanks, Kevin[,]" (the "Zoom Meeting.")

14. In a Monday November 14th 2022 at 9:00AM Zoom Meeting Mr. Holder discussed the Zip File request with Kevin Karpinski, Esq. as counsel to the County and/or Downey (Mr. "Karpinski;") in conclusion Mr. Holder asked Mr. Karpinski "So you're just going to forward the [**Sent:** Monday, August 3, 2020 4:16 PM **To:** Bright, Andrew <abright@washco-md.net>] email from Josh Neal to me?" And Mr. Karpinski replied "Yes[,]" (the "November 14th agreement.")

15. As of January 11th 2023, Mr. Holder has not received a forwarded copy of the Zip File request in accordance with the November 14th agreement.

16. On Sat, Dec 10, 2022 at 1:17 PM **Justin Holder** <jholder2004@gmail.com> sent an email subject "MPIA - Follow Up - Sanitary District SD-4 Keedysville/Sharpsburg - Intergovernmental Agreement" To: "Downey, Kirk" <kdowney@washco-md.net> kindly requesting:

> Following up on "correspondence from Washington County Attorney (the "County") in response to an April 17th 2020 Maryland Public Information Act Request for 'The ordinance, charter and agreement created by the Washington county sanitary district when forced main sewer was installed in keedysville and sharpsburg in 1988.' (the 'April 17th 2020 Request') I appreciate the Search performed in response to my April 17th 2020 Request, however the County Attorney Records Retention Policies I have located on

DEPARTMENT OF GENERAL SERVICES RECORDS MANAGEMENT DIVISION **RECORDS RETENTION AND DISPOSAL SCHEDULE**	**Schedule No.** C882
	Page 1 **of** 4

DEPARTMENT OF GENERAL SERVICES RECORDS MANAGEMENT DIVISION **RECORDS RETENTION AND DISPOSAL SCHEDULE** (CONTINUATION SHEET)		**Schedule No.** C882 **Page** 2 **of** 2
Item No	**Description**	**Retention**
5	Sanitary district files -contains but not limited to: correspondence, pump station and WWTF information transmittal forms, equipment warranty and certification forms, site drawings, brochures, catalogs, plans, agreement for engineering services, minutes of progress meetings, work plan/approvals	Screen annually. Destroy material having no further administrative, fiscal, legal or operational value. Retain permanently any material that serves to document the origin, development and accomplishments of the department. Transfer periodically to the Maryland Archives.
17	Subject files by sanitary district -contains but not limited to: correspondence, contract change orders, permits, final tabulation listings, mileage cost, equipment rental cost, inspector's report, notice of public hearings, hearing testimony, hearing procedures	Screen annually. Destroy material having no further administrative, fiscal, legal or operational value. Retain permanently any material that serves to document the origin, development and accomplishments of the department. Transfer periodically to the Maryland Archives.
2	Permits: sewer connection permits	Permanent. Transfer periodically to the MD State Archives

the Maryland State Archives and filed with the Maryland Department of General Services represent that the following records are **PERMANENTLY RETAINED:**

;(the "Permanent Records.") I am writing today to follow up with the Honorable Custodian and request a copy of the Permanent Records; or

In the Alternative, to reduce any/all burden and expense of the County in responding, I would like to visit the Williamsport location and inspect and photograph the Permanent Records.

Please let me know the County's preference.

Please have a wonderful week[,]" (the "Permanent Records" request.)

17. Applicant has made dozens of Public Information Act request over the proceeding 2 years attempting to target his search to obtain a copy or printout of the Permanent Records; Downey opining "our current thrust and parry appears unproductive to both parties" in a Nov 25, 2020, 10:45 PM email, (the "thrust and parry" for Permanent Records.)

18. On Wed, Apr 26, 2023 at 2:03 PM **Justin Holder** <jholder2004@gmail.com> sent an email subject "Re: 342-102, PIA Request regarding 'Washington County Sewer Agreements – Maugensville SUBDISTRICT'" To: "Downey, Kirk" <kdowney@washco-md.net> Cc: "Desaulniers, Kendall A." <kdesaulniers@washco-md.net>, "Jacobson, Kimberly D." <kjacobson@washco-md.net>, Kevin Karpinski <kevin@bkcklaw.com>,

Jason Parkins <jparkins@bkcklaw.com>, Brenda Pizanis <BPizanis@bkcklaw.com>

kindly requesting:

> "Dear Mr. Downey,
> I am writing to request to inspect a public record in accordance with Md. Ann. Code GP § 4-101 et seq.
>
> I would like to inspect, photograph or copy the 'agreements' to operate, construct and maintain a sewer/water system made between the Washington County Government the and/or Washington County Sanitary District and municipalities/political bodies representing:
>
> Subdistrict 15 Maugensville/orchard Hills;
> signed and sealed on or before December 31st 1993.
>
> Please note the Washington County Attorney represents to the Maryland Dept. of General Services vis a vis Retention Schedule C872, C882 and C1068 that the aforementioned 'agreements' are permanently retained records of the taxpayers of this County. See Exhibits 1 through 3 attached hereto and incorporated herein by reference.
>
> Please provide a time and cost, or reason for any delay within 10 working days in accordance with Md. Ann. Code GP § 4-203.
>
> Please have a wonderful weekend.
>
> Respectfully,
>
> Justin Holder", (the "Maugansville sewer agreement" request).

19. The County has denied Mr. Holder the right to inspect or photocopy public records described in the Maugansville sewer agreement request, baldly alleging: Mr. Holder is "attempting to individually request each of the fifteen agreements you [Mr. holder] previously requested from the County in attempt to circumvent the assessment and payment of the [$7082.20] fee associated with the search of those records previously identified by the County." The County lacks proper foundation to baldly allege Mr. Holder is "individually request[ing] each of the fifteen agreements" because Mr. Holder

has not made fifteen separate requests for all 15 sewer agreements the County alleges it has in its custody.

20. The County has arbitrarily and capriciously ignored Mr. Holder's good faith efforts to narrow his search in its denial of Mr. Holder's right to inspect or photocopy public records described in the Maugansville sewer agreement request.

21. The County did not write to Mr. Holder in 10 days in accordance with GP 4-203 advising Mr. Holder of the $7082.20 fee related to Mr. Holder's right to inspect or photocopy public records described in the Maugansville sewer agreement request.

22. The public records responsive to the Maugansville sewer agreement request can not be privileged, confidential or otherwise exempted from public disclosure because the County represents that they are public records required to be kept permanently to Maryland Dept. of General Services and the public 'writ large.

23. MD. Environment Code Ann. § 9-503 (2021) provides:

> " (a) Each county ***shall*** have a county plan or a plan with adjoining counties that: (1) Is approved by the Department; (2) Covers at least the 10-year period next following adoption by the county governing body; and (3) Deals with: (ii) Sewerage systems;"
>
> " (b) Except as provided in § 9-515 of this subtitle, each county governing body ***shall*** review its county plan at least once every 3 years in accordance with a schedule set by the Department."; and the County responded:

24. On November 21, 2020 Mr. Holder made a public information request to the County:

> "Please provide all documents, correspondence, agreements, resolutions, and modification

sent or submitted to local municipalies's and MDE and or the health department
that were

produced, required or initiated
in preparation or conduction of the trennial review of the comprehensive plans, specifically sewage and water utility available and priority (s1/s3/s5/s7 or w1/w3/w5/w7 zones)
For the 3 most recent trennial reviews.";

and B. Andrew Bright, Esq., the Assistant County Attorney, respresented:

"Having discussed the matter with the Director of Planning, and with the Interim Director of Environmental Management, it does not appear that a triennial review has been conducted in the period you have referenced. Thus, there are no known records responsive to your request in the possession of the County."

25. The United States Clean Water Act prohibits anybody from discharging "pollutants" through a "point source" into a "water of the United States" unless they have an NPDES (National Pollutant Discharge Elimination System) permit. The permit will contain limits on what you can discharge, monitoring and reporting requirements, and other provisions to ensure that the discharge does not hurt water quality or people's health. In essence, the permit translates general requirements of the Clean Water Act into specific provisions tailored to the operations of each person discharging pollutants.

26. The 4-1 sanitary district is serviced by the Antietam Wastewater treatment plant designated with NPDES Permit MD0062308, No. 13-DP-2354.

27. NPDES MD0062308, No. 13-DP-2354 § III(C)(1) "GENERAL CONDITIONS" states:

"Reporting Requirements

Pursuant to Environment Article Sub title 9-331.1, the permittee must report sanitary sewer overflows (SSOs) which result in the direct or potential discharge of raw or diluted sewage into the surface waters or ground waters of the State to the Water and Science Administration's Compliance Program.

Concurrently, the permittee shall also notify the local health department. Such reports must be made via telephone as soon as practicable, but no later than 24 hours after the time that the permittee became aware of the event. Reportable SSOs include, but are not limited to, overflows into the surface of the ground, into waterways, storm drains, ditches or other manmade or natural drainage conveyances to surface or ground waters which are reasonably likely to reach waters of the State. Overflows that are wholly contained within buildings and not likely to discharge to waterways need not be reported. Treatment plant bypasses shall be reported under General Condition III.B.1. Telephone reports shall be made to (410) 537-3510 on weekdays between 8:00 a. m. and 5:00 p.m. After hours telephone notification shall be made to emergency response number at (866) 633-4686.

When the incident is reported to the Department, the following information needs to be included:

a. the location of the overflow, including city or county,

b. the name of the receiving water, if applicable;

c. an estimate of the volume of sewage discharged;

d. a description of the sewer system or treatment plant component from which the overflow was released (such as manhole, crack in pipe, pumping station wet well or constructed overflow pipe);

e. an estimate of the overflow's impact upon public health and to waters of the State;

f. the cause or suspected cause of the overflow;

g. the estimated date and time when the overflow began and stopped or the anticipated time the overflow is expected to continue;

h. if known at the time of reporting, the steps taken or planned to reduce, eliminate and prevent reoccurrence of the overflow and a schedule of major milestones for those steps; (if unknown at the time the telephone report is made, the steps must be included in the written reports submitted under general conditions III.C.2).

i. if known at the time of reporting, measures taken or planned to mitigate the adverse impact of the overflow and a schedule of major milestones for those steps (if unknown at the time the telephone report is made, the steps must be included in the written reports submitted under general conditions III.C.2); and

j. whether there has already been a notification to the public and other City or County Agencies or Departments and how notification was done.", (the "NPDES reporting requirements").

28. NPDES MD0062308, No. 13-DP-2354 § IV "CIVIL AND CRIMINAL PENALTIES ": states:

A. "Civil Penalties for Violations of Permit Conditions
In addition to civil penalties for violations of State water pollution control laws set forth in Section 9-342 of the Environment Article, Annotated Code of Maryland, the Clean Water Act provides that any person who violates Section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act or in a permit issued under Section 404 of the Act, is subject to a civil penalty not to exceed $37,500 per day for each violation.

B. Criminal Penalties for Violations of Permit Conditions
In addition to criminal penalties for violations of State water pollution control laws set forth in Section 9-343 of the Environment Article, Annotated Code of Maryland, the Clean Water Act provides that:

1. any person who negligently violates Section 301, 302, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act, or in a permit issued under Section 404 of the Act, is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both.

2. any person who knowingly violates Section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act, or in a permit issued under Section 404 of the Act, is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than three years, or by both.

3. any person who knowingly violates Section 301, 302, 306, 307, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act, or in a permit issued under Section 404 of the Act, and who knows at that time that he thereby places another person in imminent danger

of death or serious bodily injury, is subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both.

4. ***any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under the Act, is subject to a fine of not more than $10,000 or by imprisonment for not more than two years, or by both.***", (emphasis added) (the "NPDES penalties").

29. Clean water is in the public interest and compliance with the laws governing clean water are of the utmost public import. Mr. Holder and the public have substantial and/or imminent interest in determining if the Town of Keedysville, Maryland, Washington County, Maryland government, and/or all of the aforementioned municipalities administrators/employees/officials/legislators and/or MDE agents/officials/employees, responsible for: "certification in any application, record, report, plan, or other document filed or required to be maintained under the Act" knowingly, willfully and intentionally (or worse) made false material statement(s) and representation(s) in "application, record, report, plan, or other document filed or required to be maintained under the Act", remained deliberately indifferent (or worse) to the NPDES reporting requirements and are subject to NPDES penalties, (the "public interest" in disclosure).

30. On Mon, Dec 12, 2022 at 9:26 AM **Justin Holder** <jholder2004@gmail.com> sent an email subject "MPIA - FBI COMMUNICATIONS RELATE TO CYBER SECURITY INCIDENT" to To: "Downey, Kirk" <kdowney@washco-md.net> requesting:

"Dear Washington County Custodian of Public Records:

I am writing to kindly request Public Information in accordance with MD. General Provisions Code Ann. § 4-101. Please provide the following records: Any and All Communications by email/phone/social media/in person/mail/ text (the 'Communications') with any person/entity/agent of the Federal Bureau of Investigation and/or United States Department of Justice and/or the National Security Administration (the 'US GOVERNMENT') relating to any electronic data held/stored/kept on any county electronic data computer/ server/drive/cloud/storage (the 'data') and/or any financial/bank/investment/ sweep/savings/treasury accounts that were stolen/compromised/looted/ hacked/lost (the 'money') that was associated/involved/included/related to the 'cybersecurity incident' as described in a [November 25th 2022] Facebook post...(the 'ransomware'); and

the Public record that would inform/describe/index/delineate the Washington County Government/Attorney/Sheriff/Administrator/ employee/agent (the 'County') DECLINED/REFUSED/DENIED any and/or all assistance and/or help from the US GOVERNMENT in investigating/ recovering/tracking/finding ('Recovering') the County's money and data during and/or after the ransomware and/or cybersecurity incident.

In short I am requesting any evidence or communications that the County **DECLINED/REFUSED/DENIED** *the assistance and/or help of the US GOVERNMENT IN recovering the money and/or data; I do not want any communications in which the County accepted the assistance of the US GOVERNMENT in Recovering the data and money.* (Emphasis in Original)

Please provide a time and cost estimate in 10 days.

PUBLIC INTEREST IN DISCLOSURE

I would please ask that the custodian carefully consider the balance and advantage of transparency of full release of all information (except the actual data itself). The records of the Washington County Sheriff and/or other County governmental units contain sensitive and potential private data about certain residents, persons and their businesses that could be used by bad actors to gain access to their data and/or impersonate them. The taxpayers of this County have invested millions of dollars in our network and computer systems and we need to know our hard earned tax money is secure and going to the needs of the citizens of this County. The Ransomware and cyber security incident happened 3 weeks prior and the County has not updated its citizens on the extent of the nature of the breach, nor the County's efforts to repair the Network.

To the extent the COunty [sic] has declined the assistance and/or help of the US GOVERNMENT in recovering the data and money; the citizens of this County must be informed why that policy is useful to them.

> I have been requesting the County's email retention and data backup policies for over 1 year out of great concern that in fact the Counties tendency to lose records and data would and now is, potentially [] a systemic problem affecting the taxpayer resources of Washington County. This concern is greatly amplified by the public record thus far which reflects a County that is unwilling or unable to produce any formal written policy on data retention, cloud backup or cyber security.
>
> Thank you in advance for all the hard work the County and its custodian does for our wonderful County and residents[,]" (the "FBI Communications.")

31. The County and Downey requested on August 19th 2022: "Moreover, the PIA is generally an 'iterative process.' Although [Mr. Holder is] under no duty to contact the County regarding []his request, he did not do [so] and instead [filed suit], at a time when the County's response to said request was merely two days overdue[,]" (the requested "reminder.")

32. On Sun, Jan 8, 2023 at 11:39 AM **Justin Holder** <jholder2004@gmail.com> sent an reminder email subject "Friendly Reminder on MPIA request(s) outstanding" To: "Downey, Kirk" <kdowney@washco-md.net> kindly reminding Downey and the County of their Statutory obligations in accordance with Maryland Public Information Act rated to the Rail Trail, Zip File, Permanent Records and FBI Communications request; and "PUBLIC INTEREST IN the 4 unresolved requests:

> The Public does not want to interfere with a cybersecurity investigation, but it is peculiar why the County would decline assistance from the United States Government.
>
> On April 17th 2020 I requested the Sewer Agreement between Keedysville and Washington County for SD4-1, which after 50 plus requests the County has just refused to produce and represent they do not have, despite the Permanent Retention policy. These agreements must be of grave public importance, and the Counties reluctance to turn it over is quite peculiar.

> The Aug. 3rd [email] would take less than 1 minute to complete, as would the 1 gigabyte of data on the Letters opposing Civil War Rail Trail. The failure to release these records defies logic and reason.
>
> The Public is concerned why so many resources are being devoted to the withholding of records the undersigned applicant is entitled to as a matter of law[,]" (the "peculiar behavior.")

33. MD. General Provisions Code Ann. § 4-203 (2021) "(a) (1) Except as provided in paragraph (2) of this subsection, the custodian shall grant or deny the application promptly, **but not more than 30 days after receiving the application.**";

34. MD. General Provisions Code Ann. § 4-203 (2021) "(b) (1) A custodian who approves the application shall produce the public record immediately or within a reasonable period that is needed to retrieve the public record, **but not more than 30 days after receipt of the application.**";

35. MD. General Provisions Code Ann. § 4-203 (2021) "(b) (2) If the **custodian reasonably believes that it will take more than 10 working days to produce the public record**, the custodian **shall indicate in writing or by electronic mail within 10 working days after receipt of the request:** (i) the amount of time that the custodian anticipates it will take to produce the public record; (ii) an estimate of the range of fees that may be charged to comply with the request for public records; and (iii) the reason for the delay."

36. MD. General Provisions Code Ann. § 4-203 (2021) "(b) (3) **Failure to produce the public record in accordance with this subsection constitutes a denial of an application** that may not be considered the result of a bona fide dispute unless the

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custodian has complied with paragraph (2) of this subsection and is working with the applicant in good faith;" and

37. MD. General Provisions Code Ann. § 4-203 (2021) "(c)(1) A custodian who denies the application shall: (i) **within 10 working days**, give the applicant a written statement that gives: 1. the reasons for the denial; 2. if inspection is denied under § 4–343 of this title: A. a brief explanation of why the denial is necessary; and B. an explanation of why redacting information would not address the reasons for the denial; 3. the legal authority for the denial; 4. without disclosing the protected information, a brief description of the undisclosed record that will enable the applicant to assess the applicability of the legal authority for the denial; and 5. notice of the remedies under this title for review of the denial; and (ii) **allow inspection of any part of the record that is subject to inspection**. (2) A custodian may not ignore an application to inspect public records on the grounds that the application was intended for purposes of harassment."

38. As of January 11th 2023 Mr. Holder's application to inspect and/or copy public record(s) described in the Zip File Maryland Public Information Request(s) has not been granted in accordance with the November 14th agreement.

39. As of January 11th 2023 Mr. Holder's application to inspect and/or copy public record(s) described in the Rail Trail Maryland Public Information Request(s) was not granted in 30 days, nor was Mr. Holder provided a copy "loaded on a flash drive" of the 1 Gigabyte of data he requested to inspect.

40. As of January 11th 2023 Mr. Holder has not received any response whatsoever to the Permanent Records and FBI Communications Maryland Public Information Request(s).

41. As of January 11th 2023 Downey and the County have not asserted that the public records described in the Rail Trail, Zip File, Permanent Records and FBI Communications Maryland Public Information Request(s) were confidential, contrary to State/Federal statute, not allowed by the rules of the Court of Appeals or Order of a court of record.

42. As of January 11th 2023 Downey and the County have not asserted that the public records described in the Rail Trail, Permanent Records and FBI Communications Maryland Public Information Request(s) were privileged.[2]

43. As of January 11th 2023 Downey and the County have not asserted that the public records described in the Rail Trail, Zip File, Permanent Records and FBI Communications Maryland Public Information Request(s) required denial in accordance with MD. General Provisions Code Ann. §§ 4-304 - 41.

44. As of January 11th 2023 Downey and the County have not asserted that inspection of a part of a public record(s) described in the Rail Trail, Zip File, Permanent Records and FBI Communications Maryland Public Information Request(s) by the applicant would be contrary to the public interest in accordance with MD. General Provisions Code Ann. §§ 4-343 - 56.

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[2] At one point the County did protest the Zip File request, but has since conceded.

45. As of January 11th 2023 Downey and the County have not petitioned this court for an order to continue the denial of a public record(s) described in the Rail Trail, Zip File, Permanent Records and FBI Communications Maryland Public Information Request(s) asserting disclosure of the public records the applicant requested inspection of would be contrary to the public interest in accordance with MD. General Provisions Code Ann. § 4 - 358.

46. Downey and the County "willingly" did not grant the Rail Trail, Zip File, Permanent Records and FBI Communications Maryland Public Information Request(s) within 30 days of receiving the applications; Downey and the County "willingly" did not comply with MD. General Provisions Code Ann. § 4-203 (2021)(b)(2); Downey and the County "knowing" the law are NOT working with the applicant in good faith; and Downey and the County "knowing" the law "willfully" failed to produce the public record in accordance with MD. General Provisions Code Ann. § 4-203 (2021) (b) (3) in 30 days which constitutes a denial of an application under clear Maryland Law, (the "knowingly and willfully" denied requests.)

47. Downey and/or the County after being served with a complaint in the past have produced some but not all of the records requested in theMaryland Public Information Request(s), and there is a casual nexus between prosecution of the suit and release of the information requested, (the "crystallized policy.")

48. (The County's "crystalized policy") is "a practice of unjustified delay by means of an initial denial followed by the eventual release of the requested document, resulting in

financial injury to [Applicant]" *Payne Enter., Inc. v. United States*, 837 F.2d 486, 490-91 (D.C.Cir.1988).

49. The County's crystalized policy is a hardship on Applicant because "[Mr. Holder is] indisputably [a] frequent [MPIA] requester[], whose daily conduct and decision-making [is] affected by the standards at issue" *Better Government Ass'n v. Department of State*, 780 F.2d 86 (D.C. Cir. 1986).

50. Mr. Holder has substantially prevailed and is eligible for an award of reasonable fees and cost as the *Kline v. Fuller*, 496 A.2d 325, 64 Md. App. 375 (1985) Court has provided:

> "Based on our analysis of the Md. Act and case law pertaining to the federal FOIA, we believe that certain principles have been established in determining whether the threshold of substantial prevailance has been met. Although an actual judgment in claimant's favor is not required, ***it must be demonstrated that prosecution of the lawsuit could reasonably be regarded as having been necessary in order to gain release of the information and that there was a causal nexus between the prosecution of the suit and the agency's surrender of the requested information.*** Furthermore, it is not necessary for a litigant to recover all the documents at issue, but rather key documents. Once the court determines that the complainant has substantially prevailed, that litigant becomes "eligible" but not "entitled" to an award of reasonable attorney fees and costs." (Emphasis Added)

51. As of January 11th, 2023 Downey or the County have not indicated in writing or by electronic mail within 10 working days after receipt of the Rail Trail, Zip File, Permanent Records and FBI Communications request(s): the amount of time that the custodian anticipates it will take to produce the public record; an estimate of the range of fees that may be charged to comply with the request for public records; and/or the reason for the delay in accordance with MD. General Provisions Code Ann. § 4-203(b)(2).

52. Mr. Holder's reminder to Downey and the County that their peculiar behavior, thrust and parry, breach of the November 14th agreement and crystalized policy of knowingly and willfully denying the applicant: 1) the Gigabyte of Data regarding wasted resources, 2) Permanent Records, 3) FBI communications and 4) the Zip File; illustrates "the urgency of establishing a rule of future conduct in matters of important public concern is imperative and manifest...if the public interest clearly will be hurt if the question is not immediately decided, if the matter involved is likely to recur frequently, and its recurrence will involve a relationship between government and its citizens, or a duty of government..." *Lloyd v. Supervisors of Elections*, 111 A.2d 379, 206 Md. 36 (1954).

VIOLATION OF THE MARYLAND PUBLIC INFORMATION ACT ("MD PIA")

53. Mr. Holder incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully stated herein.

54. Mr. Holder brings this action to enjoin Defendant County from unlawfully continuing to withhold public records and in order to better inform a vigorous public debate (a debate which has been shrouded in secrecy), and to vindicate the Maryland Public Information Act's guarantee of open, honest and transparent governance. All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. See GP § 4-103(a). To carry out these rights, the Maryland General Provisions shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person that requests the inspection. See GP § 4-103(b).

55. Defendant County is a County Governmental Unit and Defendant Downey is a custodian, and as such, are governed by the public disclosure requirements of the Maryland Public Information Act. Except as otherwise provided by law, a custodian shall allow a person or governmental unit to inspect any public record at any reasonable time. GP § 4-201(a).

56. Defendants' denial of Mr. Holder's request to inspect records did not indicate that the denial was made only after careful consideration to the public interest involved.

57. Defendants' denial of Mr. Holder's request to inspect records did not carefully balance the possible consequences of disclosure against the public interest in favor of disclosure.

58. Defendants did not assert the public record is priveledge or confidential in accordance with MD. General Provisions Code Ann. § 4-301(a)(1).

59. Defendants' denial of Mr. Holder's request to inspect records neither provides Mr. Holder with a brief explanation of why the denial is necessary nor an explanation of why redacting information would not address the reasons for the denial.

60. Defendants did not assert inspection of the public record would be contrary to a State or Federal Statute in accordance with MD. General Provisions Code Ann. § 4-301(a)(2).

61. Defendants did not assert inspection of the public record would be contrary to the rules adopted by the Court of Appeals or an order of a court of record in accordance with MD. General Provisions Code Ann. § 4-301(a)(2).

62. Defendants violated Mr. Holder's right "to have access to information about the affairs of government and the official acts of public officials and employees." GP § 4-103(a).

63. Defendants violated the Maryland Public Information Act by refusing to permit Mr. Holder "to inspect any public record at any reasonable time." GP § 4-201(a).

64. There is no statutory exemption under the Maryland Public Information Act, or other law, that allows the Defendants to deny Mr. Holder's requests for inspection of public records or to deny Mr. Holder a copy, printout, or photograph of a public record.

65. Pursuant to GP §4-362(b), Defendants have "the burden of sustaining a decision to deny inspection of a public record" or to "deny [Mr. Holder] a copy, printout, or photograph of a public record." Defendants cannot sustain its/his burden because its/his decision to deny Mr. Holder's right to inspect the requested documentary materials is unlawful.

66. Defendants knowingly and willfully failed to disclose or fully to disclose a public record that Mr. Holder was entitled to inspect under the Maryland Public Information Act.

67. After temporarily denying Mr. Holder inspection of a public record, Defendant Downey failed to petition this court for an order to continue the denial.

68. Defendants knowingly and willfully failed to provide a copy, printout, or photograph of a public record that Mr. Holder requested under § 4-205 of the Maryland Public Information Act.

WHEREFORE, Mr. Holder respectfully requests that this Court:

A. Assume jurisdiction over this matter pursuant to GP § 4-362;

B. Give this matter "precedence on the docket", a hearing "at the earliest practicable date" and expedite this matter "in Every way" pursuant to GP § 4-362(c)(1)(i)-(iii);

C. Enjoin Defendants County and Downey from: (l) withholding the public records requested by Mr. Holder; or (2) withholding a copy, printout, or photograph of the public records requested by Mr. Holder;

D. Issue an order for the production of the public record(s) or a copy, printout, or photograph of the public record that was withheld from Mr. Holder;

E. Order Defendants to waive all fees associated with disclosing and providing the requested records to Mr. Holder;

F. Order Defendants to fully comply with the Maryland Public Information Act in regards to future requests from Plaintiff Justin Kyle Holder;

G. Award Mr. Holder statutory damages not to exceed $1,000.00;

H. Award Mr. Holder actual damages that this court considers appropriate since Defendant(s) knowingly and willfully failed to disclose or fully to disclose a public record that Mr. Holder was entitled to inspect under the Maryland Public Information Act;

I. Award Mr. Holder actual damages that this court considers appropriate since Defendant(s) knowingly and willfully failed to provide a copy, printout, or photograph of a public record that Mr. Holder requested under § 4-205 of the Maryland Public Information Act;

J. Award Mr. Holder actual damages against Defendant(s) Downey and County that the court considers appropriate for temporarily denying Mr. Holder inspection of a public record without petitioning this court for an order to continue the denial;

K. Find that Defendant(s) Downey and County acted arbitrarily or capriciously in withholding the public record or the copy, printout, or photograph of the public record, and send a certified copy of its finding to the appointing authority of the custodian;

L. Order that Mr. Holder has "substantially prevailed" in this action, award Mr. Holder litigation costs and reasonable fees reasonably incurred in this action, as provided by GP § 4-362(g), and allow Mr. Holder thirty (30) days to submit fees and costs application to this Court; and/or

M. Grant any other relief this Court deems just and appropriate.

Respectfully submitted,

Justin K. Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, Maryland 21782
(240) 356-2008

CERTIFICATE REGARDING RESTRICTED INFORMATION

I HEREBY CERTIFY that this document does not contain any restricted information.

Justin K. Holder, *Pro Se*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of May, 2023, a copy of the foregoing AMENDED COMPLAINT was served via the MDEC system and/or US Mail, to all parties entitled to service thereof.

_____

Justin K. Holder, *Pro Se*

E-FILED; Washington Circuit Court
Docket: 6/15/2023 4:50 PM; Submission: 6/15/2023 4:50 PM
Envelope: 13069961

JUSTIN KYLE HOLDER	*	IN THE
Plaintiff	*	CIRCUIT COURT
v.	*	FOR
BOARD OF COUNTY COMMR'S OF WASHINGTON COUNTY, *et al.*	*	WASHINGTON COUNTY
	*	Case No.: C-21-CV-23-000016
Defendants	*	

* * * * * * * * * * * * * *

DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT AND FOR SANCTIONS

Defendants, BOARD OF COUNTY COMMISSIONERS FOR WASHINGTON COUNTY and KIRK C. DOWNEY, by KARPINSKI, CORNBROOKS & KARP, P.A. and KEVIN KARPINSKI, their attorneys, and pursuant to Rules 2-311 and 2-322 of the Maryland Rules, hereby move this Court to dismiss the Amended Complaint in the instant case for failure to state a claim upon which relief can be granted. In the alternative, Defendants move pursuant to Maryland Rule 2-501 for summary judgment on the grounds that there is no genuine dispute as to any material fact and that Defendants are entitled to summary judgment in its favor as a matter of law, for reasons more fully set forth in the accompanying memorandum of law.

Respectfully Submitted,

KARPINSKI, CORNBROOKS & KARP, P.A.

By: /s/ Kevin Karpinski
KEVIN KARPINSKI
AIS #9312150114

120 East Baltimore Street
Suite 1850
Baltimore, Maryland 21202–1617
410-727-5000
Kevin@bkcklaw.com
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June 2023, the forgoing was electronically filed with notice to:

Justin K. Holder
208 West Chapline Street
Sharpsburg, Maryland 21782
Pro se Plaintiff

/s/ Kevin Karpinski
Counsel for Defendant

E-FILED; Washington Circuit Court
Docket: 6/15/2023 4:50 PM; Submission: 6/15/2023 4:50 PM
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JUSTIN KYLE HOLDER	*	IN THE
Plaintiff	*	CIRCUIT COURT
v.	*	FOR
BOARD OF COUNTY COMMR'S OF WASHINGTON COUNTY, *et al.*	*	WASHINGTON COUNTY
	*	Case No.: C-21-CV-23-000016
Defendants	*	

* * * * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

Defendants, BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY and KIRK C. DOWNEY (collectively referred to as the "County"), by KARPINSKI, CORNBROOKS & KARP, P.A. and KEVIN KARPINSKI, their attorneys, submit the instant Memorandum of Law in support of its Motion to Dismiss or, in the Alternative, Motion for Summary Judgment and for Sanctions.

INTRODUCTION

This case is the perfect example to demonstrate Plaintiff Justin Holder's ("Holder") attempts to utilize Maryland's Public Information Act ("PIA") to harass the County. In an apparent attempt to break the world record for most substantive material omissions and/or misrepresentations contained in a pleading, Holder filed the instant complaint on or about January 12, 2023. In response, the County moved to dismiss the Complaint on February 20, 2023. On May 31, 2023—two days prior to a dispositive motions hearing in this matter—Holder filed the Amended Complaint, which included additional allegations in which Holder alleges that the County violated the PIA. As will be explained, the

Amended Complaint fails to provide adequate context or factual history associated with Holder's request, including the County's previous responses to Holder's similar PIA requests or Holder's (oftentimes) prior and nearly identical PIA requests, to which the County responded. The following pages will reveal that Holder has—for a substantial period of time—attempted to abuse the PIA simply to harass the County. As will be explained, once the critical context and relevant facts are considered, it becomes clear that the Complaint must be dismissed or, in the alternative, that summary judgment must be entered in favor of the County.

FACTUAL ALLEGATIONS CONTAINED IN THE AMENDED COMPLAINT

Below, for the purposes of the County's Motion, the County summarizes the factual allegations contained within the Amended Complaint, without conceding the veracity or truthfulness thereof:

On December 11, 2021, Plaintiff, Justin Holder ("Holder") sent a PIA request to Defendants in which he submitted the following:

> I was reviewing the BOCC records and found this report attached. On page 13 of the attached documents:
>
> 'Question: On May 12, 2012, the County sent out **800 notification letters to owners of all properties within 500 feet of the proposed trail.** Hence, consider the response of only **80 residents who oppose** is rather miniscule compared to the 700 county residents who are in favor of the trail. Why do the preferences of 80 residents outweigh the preference of 700 residents? Why do the preferences of 80 residents, most of whom live in south county, outweigh the preferences of 345 residents who live in south county – especially when County Planning says south county has a shortage of walking and jogging areas?'
>
> While I share Mr. Woods ambition to provide trails, I would like to better understand the opposition.

> I appreciate all the access to documents the County provides. I would like to review these documents in the least burdensome method possible. I would gladly stop in and scan the documents with a phone if the file is only hard copies. If by chance this file and list of 800 'interested parties,' and response is available electronically could I please obtain a copy.
>
> I appreciate all the good work everyone does at the County. Thank you kindly in advance for your assistance.

Am. Complaint at ¶8 (the "Civil War Trail Request"). Attached to the Civil War Trail Request was an agenda from the Board of County Commissioner's meetings, in which the Civil War Trail was discussed. *Id.* at ¶ 9.

On November 3, 2022, Holder sent another PIA request to the County, in which he referenced an email sent by Mr. Joshua O'Neal, a County information technology employee, in which Mr. Holder requested the following:

> I am writing to kindly request Public Information in accordance with MD.GeneralProvisionsCodeAnn.§4-101. Please provide the following records:
>
> In referring to the email record;
>
> > '**From:** O'Neal, Joshua <joneal@washco-md.net>
> > **Sent:** Monday, August 3, 2020 4:16 PM
> > **To:** Bright, Andrew <abright@washco-md.net>
> > **Cc:** McCarty, Rachael <rmcarty@washco-md.net>
> > **Subject:** RE 23rd(?) Public information request from Mr. Holder
>
> 16 emails fall under the parameters specified by Mr. Holder. **Attached in a zip file.** -Josh' (emphasis supplied); please provide the ("**Attached in a zip file"**) record as it was provided in the email record ***supra***.
> Please provide a time and cost estimate in 10 days.
>
> Please see **Public Interest in Brady Evidence** attached hereto and incorporated herein by reference.

Am. Complaint at ¶ 11 (the "Zip File Request"). In response, on November 11,

2022, undersigned counsel requested a meeting with Holder to discuss the scope of his request. Am. Complaint at ¶ 14. That meeting was held on November 14, 2022. *Id.* at ¶ 14. At that meeting, Holder requested that the County, through undersigned counsel, forward the email from Mr. O'Neal, including the .zip file that was attached to the initial email. Am. Complaint at ¶ 14.

On December 10, 2022, Holder again requested records from the County and expressly acknowledged the County's prior response to an identical request. Am. Complaint at ¶ 16. Therein, Holder submitted the following to the County:

> Following up on "correspondence from Washington County Attorney (the "County") in response to an April 17, 2020 Maryland Public Information Act Request for "The ordinance, charter and agreement created by the Washington County sanitary district when forced main sewer was installed in Keedysville and Sharpsburg in 1998' (the 'April 17 2020 Request') I appreciate the search performed in response to my April 17, 2020 Request, however the County Attorney Records Retention Policies I have located on the Maryland State Archives and filed with the Maryland Department of General Services represent that the following records are **PERMANENTLY RETAINED**[.] ;(the "Permanent Records.")
>
> I am writing today to follow up with the Honorable Custodian and request a copy of the Permanent Records; or
>
> In the Alternative, to reduce any/all burden and expense of the County in responding, I would like to visit the Williamsport location and inspect and photograph the Permanent Records.
>
> Please let me know the County's preference.

Am. Complaint at ¶ 16 (the "Permanent Records Request") (emphasis in original). With respect to this request, Holder concedes that he previously requested those records from the County and the County informed him that no such records exist. *See* Am. Complaint at ¶ 32 ("On April 17th 2020 I requested the Sewer Agreement between Keedysville and Washington County for SD4-I, which after

50 plus requests the County has just refused to produce and represent they do not have"); *see also* Am. Complaint at ¶ 17 (conceding that Holder has made "dozens of Public Information Act request [sic] over the preceding 2 years attempting to target his search to obtain a copy or printout of the Permanent Records").

On December 12, 2022, Holder made yet another PIA request to the County. In this request, Holder submitted the following to the County:

> Dear Washington County Custodian of Public Records
>
> I am writing to kindly request Public Information in accordance with MD. General Provisions Code Ann. § 4-101. Please provide the following records:
>
> Any and All Communications by email/phone/social media/in person/mail/text (the 'Communications') with any person/entity/agent of the Federal Bureau of Investigation and/or United States Department of Justice and/or the National Security Administration (the 'US GOVERNMENT') relating to any electronic data held/stored/kept on any county electronic data computer/server/drive/cloud/storage (the 'data') and/or any financial/bank/investment/sweep/savings/treasury accounts that were stolen/compromised/looted/hacked/lost (the 'money'))m that was associated/involved/included/related to the 'cybersecurity incident' as described in a [November 25 2022] Facebook post…(the 'ransomware'); and
>
> the Public record that would inform/describe/index/delineate the Washington County Government/Attorney/Sheriff/Administrator/employee/agent (the 'County') DECLINED/REFUSED/DENIED any and/or all assistance and/or help from the US GOVERNMENT in investigating/recovering/tracking/finding ('Recovering') the County's money and data during and/or after the ransomware and/or cyber security incident.
>
> *In short I am requesting any evidence or communications that the County* ***DECLINED/REFUSED/DENIED*** *the assistance and/or help of the US GOVERNMENT IN recovering the money and/or data; I do not want any communications in which the County accepted the*

assistance of the US GOVERNMENT in Recovering the data and money.

Please provide a time and cost estimate in 10 days.

PUBLIC INTEREST IN DISCLOSURE

I would please ask that the custodian carefully consider the balance and advantage of transparency of full release of all information (except the actual data itself). The records of the Washington County Sheriff and/or other County governmental units contain sensitive and potential private data about certain residents, persons and their businesses that could be sued by bad actors to gain access to their data and/or impersonate them. The taxpayers of this County have invested millions of dollars in our network and computer systems and we need to know our hard earned tax money is secure and going to the needs of the citizens of this County. The Ransomware and cyber security incident happened 3 weeks prior and the County has not updated its citizens on the extent or nature of the breach, nor the County's efforts to repair the Network.

To the extent the COunty [sic] has declined the assistance and/or help of the US GOVERNMENT in recovering the data and money; the citizens of this County must be informed why that policy is useful to them.

I have been requesting the County's email retention and data backup policies for over 1 year out of great concern that in fac the Counties tendency to lose records and data would and now is potentially [] a systemic problem affecting the taxpayer resources of Washington County. This concern is greatly amplified by the public record thus far which reflects a County that is unwilling or unable to produce any formal written policy on data retention, cloud backup or cyber security.

Thank you in advance for all the hard work the County and its custodian does for our wonderful County residents.

Id. at ¶ 18 (the "FBI Communications Request") (emphasis in original).

According to the Amended Complaint, on April 26, 2023, Holder submitted yet another PIA request to the County. Am. Complaint at ¶ 18. As will be explained more fully hereafter, this request relates to the Permanent Records

Request. *See id.* In said request, Holder submitted the following to the County:

> I would like to inspect, photograph or copy the 'agreements' to operate, construct and maintain a sewer/water system made between the Washington County Government the [sic] and/or Washington County Sanitary District and municipalities/political bodies representing:
>
> Subdistrict 15 Maugensville/orchard Hills;
>
> Signed and sealed on or before December 31st 1993.
>
> Please note that Washington County Attorney represents to the Maryland Dept. of General Services vis a vis Retention Schedule C872, c882 and C1608 that the aforementioned 'agreements' are permanently retained records of the taxpayers of this County. See Exhibits 1 through 3 attached hereto and incorporated herein by reference.

Am. Complaint at ¶ 18 (the "Maugensville Request").[1]

With respect to all of the PIA requests outlined above, Holder represents that the County has failed to produce the records he requested and thus, has allegedly violated the PIA. However, the Amended Complaint is rife with misrepresentations or omissions regarding the County's responses to Mr. Holder's voluminous PIA requests in an attempt to mislead the Court. As will be explained, Holder's critical omissions cannot be ignored and given the County's responses to those requests, Holder's claims must be dismissed or, in the alternative, the County is entitled to summary judgment in its favor.

FACTS CONTAINED IN EXHIBITS TO THE INSTANT MOTION

A. The Zip File Request.

On November 29, 2022, the County responded to Holder's PIA request and

[1] The County is addressing the allegations chronologically for purposes of clarity, despite the fact that the Amended Complaint does not. As will be explained, the Maguensville Request is derivative of and relates to the Permanent Records request.

provided him with a copy of the .zip file he requested. *See* November 29, 2022 email to Holder, a copy of which is attached hereto and incorporated herein as Exhibit 1. Holder was apparently dissatisfied with the County's response and responded, suggesting that the email from Mr. O'Neal and accompanying .zip file should be sent to him "directly from Mr. O'Neal." *See* November 30, 2022 Email chain from Holder, attached hereto and incorporated herein as Exhibit 2. Undersigned counsel responded to Mr. Holder indicating that Mr. O'Neal will not be directly sending the .zip file to Holder. Ex. 2. Holder then responded to that communication and further contested the County's response, despite being provided with the .zip file he requested. Ex. 2.

Thereafter, in an attempt to proceed in good faith with Holder, the County provided the August 3, 2020 email, along with the accompanying .zip file to Holder. *See* December 5, 2022 email chain with Holder, a copy of which is attached hereto and incorporated herein as Exhibit 3. Unsurprisingly, Holder was not satisfied with the County's response again and requested that the email and accompanying .zip file be provided to him directly by Mr. O'Neal. *See id.*

B. The Civil War Trail Request.

With respect to the Civil War Trail Request, the County initially responded to Holder's request and indicated that the County employee knowledgeable of the records Holder sought was out of the office due to a family emergency for an uncertain amount of time. *See* January 7, 2022 email from Rachael McCarty to Holder, a copy of which is attached hereto and incorporated herein as Exhibit 4. On January 17, 2022 Holder responded to said email, requesting an update as

to the status of his request and, the following day, was informed by County staff that the County employee previously referenced, who was experiencing a family emergency, returned in a part-time capacity and that the County would "notify [Holder] as soon as we are able to determine the volume of responsive documents and the estimated reproduction costs." January 18, 2022 email chain between Kimberly Jacobson and Holder, attached hereto and incorporated herein as Exhibit 5.

Thereafter, after the County employee who was previously absent—and still working in a part-time capacity—began researching Holder's request, undersigned counsel responded to Holder on January 27, 2022, indicated there are thousands of documents potentially responsive to his request, and requested either: (1) Holder narrow his request; or (2) Holder submit a $500 deposit to the County to cover the costs of the County's search for, review and preparation of those records. *See* January 27, 2022 email chain between Kevin Karpinski and Holder, attached hereto and incorporated herein as Exhibit 6. Holder—apparently dissatisfied with the County's response—responded and indicated that he would be willing to narrow his request, if the County provided certain documents related to his request, including: (1) the letter sent to property owners regarding the Civil War Trail; (2) a list of recipients of the letter; and (3) the list of responses the County received. Ex. 6. At some point, Respondent made yet another request for those records, to which the County responded. *See* March 14, 2022 email from Brenda Pizanis to Holder, a copy of which is attached hereto and incorporated herein as Exhibit 7. Said response included an email from a

County employee, in which the employee recognized that there were thousands of documents potentially responsive to Holder's request. Ex. 7.

Again, Holder responded to the County's response and requested additional documents. *See* April 13, 2022 email from Holder, a copy of which is attached hereto and incorporated herein as Exhibit 8. In response to that follow up request, the County responded to Holder's April 13, 2022 email, providing the procedural history associated with Holder's request, reiterating the County's request for a $500 deposit, and providing some of the requested documents that were able to be retrieved and reviewed without necessitating Holder's payment of a deposit. *See* April 22, 2022 email from Brenda Pizanis to Holder, a copy of which is attached hereto and incorporated herein as Exhibit 9. Unsurprisingly, Holder took issue with the County's response yet again and requested he be entitled to inspect the County's directory of the County's computer system in which those files were contained. *See* April 22, 2022 email from Holder to Kirk Downey, a copy of which is attached hereto and incorporated herein as Exhibit 10.

C. The FBI Communications Request.

Prior to the request referenced in the Amended Complaint, Holder submitted a request to the County for essentially any and all records concerning a "cyber security incident." *See* November 28, 2022 email from Brenda Pizanis to Holder, a copy of which is attached hereto and incorporated herein as Exhibit 11. In that response, the County denied Holder's request on the basis of several PIA exemptions: (1) a pending law enforcement investigation under GP § 4-351;

and (2) the cybersecurity exemption under GP § 3-434. The County also noted that, due to the overbroad nature of Holder's request, he was essentially requesting to receive the entirety of the County's network. *Id.* Holder responded to County's response and indicated that he will "follow up in a few monthes [sic]." *See* November 28, 2022 email from Holder to Brenda Pizanis, a copy of which is attached hereto and incorporated herein as Exhibit 12.

Despite the County informing Holder that the records he previously requested could not be disclosed, on December 12, 2022, Holder submitted the FBI Communications Request to the County, which is one of the communications underlying the Amended Complaint in the instant matter. *See* December 12, 2022 email from Holder, a copy of which is attached hereto as Exhibit 13.

D. The Permanent Records Request.

On or about April 17, 2020, Holder requested that the County provide him with several documents including an "Oct 6th, 1958 agreement, charter, ordinance or code in which Keedysville installed water in town. It is going to be the Keedysville Boonsboro water board that was formed" as well as "[t]he ordinance, charter and agreement created by the Washington county sanitary district when forced main sewer was installed in keedysville and sharpsburg [sic] in 1988" and other items relating to those documents. *See* May 6, 2020 email from Andrew Bright to Adam Grievell, Holder's prior attorney, a copy of which is attached hereto and incorporated herein as Exhibit 14. Mr. Bright, a former County employee, responded to this request and indicated the following:

> At this point, it appears that the County has no records in its possession which are responsive to [ ] the five requests regarding "Keedysville Water" or water service. It is possible that such records would be in the possession of the Mayor and Council of Keedysville, the Keedysville Water Commission or the Boonsboro Keedysville Water Advisory Board.

Id. Nonetheless, Mr. Holder requested those records a second time on May 22, 2020. *See* May 28, 2020 letter from B. Andrew Bright, a copy of which is attached hereto and incorporated herein as Exhibit 15 (requesting "[a]ll loan applications, grant applications, bond agreements, ordinances, mandates, laws, agreements related to the 1985 to 1991 installation of forced main sewer in sharpsburg md and keedysville md [sic]"). In response, the County provided Holder with an estimated fee of $1,300, noting the very broad nature of Holder's request and that there were potentially 5,000 pages of records of responsive documents to that request. *Id.* Thereafter, Holder contacted the County and indicated that he was no longer interested in pursuing those items. *See* May 31, 2020 email from Holder to Kirk Downey, a copy of which is attached hereto and incorporated herein as Exhibit 16. Based on those communications, the County informed Holder that it did not appear that the County was in possession of the 1988 agreement he referenced, and it did not exist. At some point, Holder again requested that the alleged agreement be provided to him, and the County responded on September 3, 2021, informing him that no such agreement existed. *See* September 3, 2021 letter to Holder, a copy of which is attached hereto as

Exhibit 17.[2]

On February 15, 2023, Holder submitted yet another PIA request to the County, which pertains or relates to the Permanent Record request. *See* February 23, 2023 correspondence to Holder, attached hereto and incorporated herein as Exhibit 18. Therein, Holder requested:

> [A]ny and all:
>
> investigative records, employee reprimands, policy and procedural remedial measures take and/or notices sent to the Md. Dept of General services;
>
> relating to the destruction of "Permanent Records" as described *supra* and in attached ***Holder 021523 re Destruction of Permanent Records.pdf;*** specifically in reference to the destruction of the 1988-1991 agreement(s) between "Washington County and sub division/town for water and sewerage services."

Id. (Emphasis in original). In response, on February 23, 2023, the County informed Holder that it was not in possession of any such documents and reiterated—as previously communicated—that: "the County is not in possession of any' agreement between 'Washington County and sub division/town for water and sewerage services[,]" which relates to your previous request(s) and is peripherally related to the instant request." *Id.*

On March 2, 2023, Holder submitted an additional PIA request related to the Permanent Records Request, in which he requested the following:

> Any and all amendments provided to the Md. Dept of General services of county records retention scheduled C882 or C1068 (previously C772).

[2] Although the County was not in possession of the intergovernmental agreement which Holder sought, the County did provide some potentially responsive documents to that request, including meeting minutes. *Id.*

See March 31, 2023 correspondence from Holder, attached hereto and incorporated herein as Exhibit 19. The County responded on March 31, 2023, informed Holder that it was not in possession of any such records and provided him with a URL to a location where any such amendments could be located. *Id.*

E. The Subdistrict Agreements and Maugensville Requests.

On March 24, 2023, Holder submitted a request to the County, in which he sought agreements regarding the operation of sewer and/or water systems between the County and several municipalities and/or subdistricts. *See* April 6, 2023 correspondence to Holder, attached hereto and incorporated herein as Exhibit 20. Specifically, Holder requested the following:

> The 'agreements' to operate, construct and maintain a sewer/water system made between the Washington County Government and/or Washington County Sanitary District and municipalities/political bodies representing:
>
> Subdistrict 1 Halfway;
> Subdistrict 2 Conococheague;
> Subdistrict 3 Hunter Hill Estates;
> Subdistrict 5 Potomac;
> Subdistrict 5-1 Cloverton/Greenlawn;
> Subdistrict 6 Fountainhead;
> Subdistrict 7 Mt. Aetna;
> Subdistrict 9 Highfield/Cascade;
> Subdistrict 12 Rolling Hills;
> Subdistrict 14 Sharpsburg Pike;
> Subdistrict 15 Maugansville/Orchard Hills;
> Subdistrict 15-1 Martins Crossroads/Cearfoss;
> Subdistrict 16 Saint James;
> Subdistrict 18 Conococheague; and
> Subdistrict 19-1 Sandy Hook
>
> Signed and sealed on or before December 31, 1993.

Id. (the "Subdistrict Agreements Request").[3] On April 6, 2023, the County responded, informing Holder that any such responsive records—to the extent they exist—would be maintained in fifteen boxes that correspond to the names of those projects, municipalities or subdivisions. *Id.* As a result, to search for and locate any records responsive to that request, County employees would be required to hand search each of those boxes, which the County estimated would take a considerable amount of time. *See id.* Therefore, the County requested that Holder pay a deposit for the search and retrieval of those records. *Id.* That same day, *i.e.*, April 6, 2023, Holder responded to the County's request for a fee estimate and requested either: (1) a waiver of the fee associated with his former request; or (2) that he be entitled to visit the County offices and hand search the fifteen boxes of records. *See* April 24, 2023 correspondence to Holder, attached hereto and incorporated herein as Exhibit 21.

The County responded to Holder's request on April 24, 2021. *Id.* With respect to Holder's request: (1) the County denied Holder's request for a fee waiver after consideration of the factors set forth under GP § 4-206(e). The County also informed Holder that, to permit him to hand search the fifteen boxes, the County would be required to pre-screen those boxes to remove any confidential records or other records exempt from disclosure under the PIA. *Id.* The following day, Holder submitted another PIA request to the County, in which he requested the following:

[3] The Subdistricts Agreements Request is derivative of the permanent records request, wherein Holder requested a copy of a similar agreement which pertained to the Town of Keedysville. *See supra.*

> [T]o inspection, photograph or copy the "agreements" to operate, construct and maintain a sewer/water system made between the Washington County Government and/or Washington County Sanitary District and municipalities/political bodies representing:
>
> Subdistrict 5-1 Cloverton/Greenlawn;
>
> Signed and sealed on or before December 31, 1993.

See April 26, 2023 correspondence to Holder, attached hereto and incorporated herein as Exhibit 22. Of note, the agreement pertaining to Cloverton/Greenlawn was one of the fifteen agreements Holder previously requested in the Subdistrict Agreements Request. *Compare* Ex. 20 *with* Ex. 22. Out of an abundance of good faith, the County searched for and located the agreement requested by and returned a copy to him on April 26, 2023. *See* Ex. 22.

That same day, after receiving the County's response to his prior PIA request, Holder submitted yet another request to the County. *See* May 23, 2023 correspondence to Holder, attached hereto and incorporated herein as Exhibit 23. In Holder's April 26, 2023 PIA request, *i.e.*, the Maugensville Request, Holder requested the following to the County:

> I would like to inspect, photograph or copy the 'agreements' to operate, construct and maintain a sewer/water system made between the Washington County Government and/or Washington County Sanitary District and municipalities/political bodies representing:
>
> Subdistrict 15 Maugensville/orchard Hills;
>
> Signed and sealed on or before December 31, 1993.

Id. The Maugensville Request specifically requested another one of the fifteen agreements that Holder previously requested in the Subdistrict Agreements

Request. *Compare* Ex. 20 with Ex. 23. In response, on May 23, 2023, the County informed Holder that he was essentially attempting to side-step the County's previous request for a deposit in response to the Subdistrict Agreements Request, by requesting those agreements individually in separate requests. *See* Ex. 23. Therefore, the County requested that Holder pay the deposit requested in its prior response and informed him, as it previously did, that the amount of the requested deposit was not entirely certain at that point, that it may exceed or be less than the amount requested by the County, and that—to the extent the amount necessary to conduct the search is less than the requested deposit—any additional funds will be returned to Holder.[4] *Id.*

F. The County's Collective Response to Holder's Later PIA Requests regarding the FBI Communications Request, the Permanent Records Request, the Zip File Request and the Civil War Trail Request.

After Holder contacted the County on January 8, 2022 concerning all of the requests identified in the initial Complaint in this matter, *see* Am. Complaint at ¶ 32, the County responded to that email on January 12, 2022 providing a response to each of Holder's PIA requests. *See* January 12, 2022 email from Jason Parkins to Holder, a copy of which is attached hereto as Exhibit 24. In that correspondence, the County responded to the FBI Communications Request as follows:

> If any documents responsive to your request exist, as indicated in the letter you received from my office on November 28, 2022, these

[4] Although the County requested the Holder pay the deposit previously requested, the County—out of an abundance of good faith—revised the fee previously requested and reduced it on account of the costs associated with the Cloverton agreement, which the County provided to Holder. *See* Ex. 22; *see also* Ex. 23.

> records pertain to an ongoing law enforcement investigation and your request is denied pursuant to GP § 4-351(a)(1). To the extent you are considered a "person in interest" under the PIA with respect to those records, your request is denied pursuant to GP § 4-351(b)(1), (3) and (6) as disclosure of the information you requested would "interfere with a valid and proper law enforcement proceeding[,]" "constitute an unwarranted invasion of personal privacy[,]" and "prejudice an investigation[.]" Your request is also denied on the basis that any such responsive records would fall under the attorney/client privilege. GP § 4-301(a)(1).
>
> Pursuant to GP § 4-362, you are entitled to seek judicial review of this decision. You may also refer any concerns about this correspondence to the Public Access Ombudsman pursuant to GP § 4-1B-01 et seq. Additionally, do not hesitate to contact my office in the event you wish to clarify or narrow the scope of your request.

Id. In response to Holder's comments regarding the Permanent Records Request, the County indicated that "the County has reviewed its files and has no responsive documents." *Id.* With respect to the Zip File Request, the County confirmed its earlier communication that "The County has previously responded to this request and provided you with a copy of the .zip file you requested. Mr. O'Neal will not be directly forwarding the email to you." *Id.* Lastly, with respect to the Civil War Trail Request, the County informed Holder that " [t]he County previously responded to this line of requests and requested that you submit a deposit for the requested records. At present, no such deposit has been paid. Please let me know if you wish to pay the deposit to proceed with this request." *Id.*

In sum, despite Holder's assertions in the Amended Complaint that the County did not provide him with the records he requested or failed to respond to any of the PIA requests, this is simply not the case. As outlined above, the County responded to Holder's PIA requests and provided responsive documents where

available, denied certain requests on bases permitted under the PIA, or requested that Holder pay a deposit, which Holder has refused to pay. *See* supra.

ARGUMENT

I. The County has Already Responded to and/or Denied Holder's Requests.

As indicated above, the Amended Complaint is rife with omissions, misstatements or misrepresentations concerning the County's responses to Holder's voluminous onslaught of PIA requests that he regularly submits to the County. In sum, based on the exhibits attached hereto, the County has complied with Holder's repeated and—oftentimes—duplicative requests. Noticeably absent from the Amended Complaint is any of the surrounding context concerning those requests. Although the County has already detailed how it responded to the PIA requests about which Holder presently complains, that the PIA requests that are the subject of the instant suit are duplicative or derivative of prior requests Holder submitted to the County and were responded to by the County, the County will provide a summary below with respect to each request identified by Holder in the Amended Complaint.

A. The Zip File Request.

With respect to the Zip File Request, the County provided the requested .zip file to Holder, on more than one occasion. Specifically, the County provided the .zip file to Holder on November 29, 2022. Ex. 1. Although Holder was unsatisfied with the County's response, the County—in an effort to appease Holder's concerns—provided the .zip file, along with the requested email to Holder on December 5, 2022. Ex. 3. None of this context was provided by Holder

in the Amended Complaint and Holder's representation that he received no response to this request is demonstrably false and likely made in bad faith. Although after the County provided Holder with the requested records, Mr. Holder appeared to take issue with the fact that he would like the email, along with the attached .zip file, to be forwarded to him by Mr. O'Neil. *See* Ex. 3. Nonetheless, the PIA provides access to records and does not permit a requestor to specifically identify and determine who the records should be sent by. *See generally* GP § 4-201. Therefore, to the extent Holder challenges the County's response on the basis that the file was not provided by Mr. O'Neal—an allegation noticeably absent from the Amended Complaint—any such allegation is meritless.

B. The Civil War Trail Request.

Without belaboring the facts set forth above, established from the exhibits attached to the instant motion, Holder has submitted numerous requests to the County in which he sought documents pertaining to the Civil War Trail, including several derivative requests in which he sought what is essentially meta-data connected to those requests. Again, Holder fails to provide any of the associated context within the Amended Complaint, or even reference to any response or communication he received from the County concerning those requests. Through those omissions, Holder entirely misrepresents the context and status of the Civil War Trail Request. What is clear however, is that the County requested that Holder pre-pay a deposit of $500 to proceed with his request or that Holder narrow his request. Although the County produced some

of the documents that could be produced without requiring the $500 deposit, Holder is apparently still dissatisfied with the County's responses to date and apparently unwilling to pay such a deposit.

To the extent Holder challenges the $500 deposit, which he cannot, because any reference to the County's request for a deposit is noticeably absent from the Amended Complaint, Holder fails to understand two aspects of the County's response: (1) that the County is entitled to request that Holder prepay a deposit to receive the records he requested, *Glass v. Anne Arundel Cty.*, 453 Md. 201, 212–13, 160 A.3d 658, 664–65 (2017); and (2) that the County must review said records to determine whether they contain any information that cannot or should not be disclosed under the PIA. With respect to the second point, GP § 4-206(b) provides the following:

> (b)(1) Subject to the limitations in this section, the official custodian may charge an applicant a reasonable fee for:
>
> > **(i) the search for, preparation of, and reproduction of a public record prepared, on request of the applicant, in a customized format; and**
> > **(ii) the actual costs of the search for, preparation of, and reproduction of a public record in standard format, including media and mechanical processing costs.**
>
> (2) The **staff and attorney review costs included in the calculation of actual costs incurred** under this section shall be prorated for each individual's salary and actual time attributable to the search for and preparation of a public record under this section.

GP § 4-206(b) (emphasis added). Accordingly, despite the availability of those records, the County must review all of the requested records to ensure that the County complies with its obligations under the PIA. Further, although Holder represents that the County denied or failed to respond to this line of PIA requests,

the Supreme Court of Maryland has noted that a request for the pre-payment of a deposit does not constitute a custodian of records withholding or denying a PIA request. *Glass*, 453 Md. at 237, 160 A.3d at 679 (holding that a custodian did not withhold or deny the inspection of records when she provided the requestor with an estimate of the fees for further review of archived emails). Accordingly, based on the above, Holder's complaints with respect to the Civil War Trail Request are baseless and the County is entitled to summary judgment on those grounds.

C. The FBI Communications Request.

As detailed above, Holder previously submitted a request to the County in which he sought essentially any and all documents concerning the "cybersecurity incident" identified in the Amended Complaint. In response to that request, the County informed Holder that those records are the subject of a pending investigation, relate to matters that concern the security of the County's IT systems, and could not be disclosed.

Nonetheless, despite the County's response, Holder submitted the FBI Communications Request to the County. As implicit—based on the County's previous denial—the communications requested by Holder pertain to the ongoing investigation associated with the "cybersecurity incident" and would not be disclosed. Despite this, Holder submitted the FBI Communications Request to the County, which is entirely derivative of his previous request and also seeks communications that would be exempt from disclosure based on the pending investigation associated with that incident. Despite this, the County responded

to Holder's request and informed him of the pending investigation and that those records would not be disclosed. Based on the above, the County is entitled to summary judgment, because the County responded to Holder's PIA request prior to Holder filing the instant suit, which is noticeably absent from Holder's pleading.

D. The Permanent Records Request.

With respect to the Permanent Records Request, the County previously informed Holder, in 2020 and 2021 that it was not in possession of the alleged intergovernmental agreement that he sought at that time. In response, Holder apparently located some form of purported retention schedule from the State of Maryland and—for some reason—believed that referencing that retention schedule would somehow result in the County being able to locate the record. This is not the case. As evidenced by the exhibits attached hereto, the County is not in possession of any such agreement, despite Holder's repeated requests for the same. Furthermore, even though the County is not in possession of that agreement—and arguably not required to respond to a PIA request to which it already responded—the County did, in fact, respond to Permanent Records Request. *See supra*. Given the above, the County is entitled to summary judgment in this matter or, in the alternative, Holder's claims against the County should be dismissed.

II. The County Appropriately Aggregated Holder's Maugensville Request with his prior Requests, Given the County's Prior Request for a Deposit.

The practice of aggregating PIA requests is not specifically addressed

within the PIA itself. However, the Attorney General and Public Information Act Compliance Board ("PIACB") has provided some guidance with respect to this issue. The Attorney General has specifically opined that:

> On a rare occasion, a requester (or group of requesters) will attempt to artificially break a large request into a series of smaller requests in order to obtain two free hours searching for each request and thereby circumvent the assessment of fees. In that event, it seems reasonable for the agency to aggregate those requests as a single request with the appropriate fee.

Office of the Attorney General, Maryland Public Information Act Manual (17th ed. 2022) 7-2–7-3. Likewise, the PIACB has analyzed the issue of aggregating PIA requests on several occasions. *See* PIACB Op. 22-05 (Dec. 10, 2021); PIACB Op. 21-12 (May 27, 2021); PIACB 21-01 (Oct. 5, 2020); PIACB 18-08 (Mar. 7, 2018). In those cases, the standard applicable to consideration of whether an agency's aggregation of PIA requests was proper depends upon whether the responding agency acted reasonably. *See* PIACB 21-12 at 4. When engaging in such analysis, the PIACB considers several factors including: (1) the temporal proximity between the requests; and (2) whether the requests seek records similar in nature and substance. PIACB Op. 22-05 at 6. The PIACB has found the aggregation of requests reasonable in situations where a requester submitted multiple requests between a few days and nearly a month apart where those requests sought records similar in nature and character. *See* PIACB Op. 22-05 at 6; PIACB Op. 21-12 at 4. As made clear by the Attorney General's guidance, an additional relevant consideration is whether the requester is attempting to circumvent a fee estimate. *See supra*.

In this case, in the Subdistrict Agreements Request, Holder sought any

agreements between the County or the County's former Sanitary District and fifteen municipalities or subdistricts, including Cloverton and Maugensville. *See* Ex. 20. In response, the County provided Holder with an estimated fee for the search and retrieval of those records, based on the hourly rates of the employees who would be conducting that search. *Id.* After Holder requested a waiver of that fee, which the County denied on April 24, 2023, **one day later,** on April 25, 2023 Holder requested any agreement pertaining to the construction or operation of a sewer or water system between the County and Cloverton/Greenlawn, which was one of the fifteen agreements Holder requested in the Subdistrict Agreements Request. Ex. 22. Believing that Holder had narrowed the Subdistrict Agreements Request, the County searched for and provided Holder with the record he requested on April 26, 2023. *Id.*

That same day, Holder requested a copy of a similar agreement for Maugensville/Orchard Hills. Ex. 23. Again, any agreement pertaining to Maugensville was one of the fifteen agreements Holder requested in the Subdistrict Agreements Request. Simply put, after the County denied Holder's request for a fee waiver in reference to the Subdistrict Agreements Request, Holder requested two of the fifteen agreements requested in the Subdistrict Agreements Request within **two days**. Thus, it became apparent to the County, given the surrounding context, that Holder was attempting to circumvent the fee deposit previously requested by the County, by submitting individual requests for those agreements.

In this case, the Subdistrict Agreements Request, the Maugensville

Request, and Holder's request pertaining to the agreement Cloverton all pertain to the same categories of records. Both the request pertaining to Cloverton and the Maugensville request were submitted to the County within two days of the County denying Holder's request for a waiver of the fee associated with the Subdistrict Agreements Request. Although the County believed that Holder had narrowed the scope of his request—when he requested a copy of the Agreement for Cloverton and provided him with the responsive document without charge—when Holder submitted the Maugensville Request to the County, it became clear that Holder was attempting to individually request those records to attempt to circumvent the County's previous fee estimate and the County's denial of Holder's request for a fee waiver.

Simply put, if the County responded to the Maugensville request, it is apparent that Holder would have continued his practice of individually requesting each of the fifteen agreements he requested in the Subdistrict Agreements Request. Thus, Holder would have received the two free hours of search and retrieval time, *See* GP § 4-206(c), associated with each request and would likely be able to entirely circumvent the fee the County previously assessed to him. Combined with Holder's vexatious utilization of the PIA against the County in general, the County acted reasonably in aggregating the Maugensville Request with the Subdistrict Agreements Request and Holder's request pertaining to Cloverton. This Court should not permit Holder to utilize the PIA in bad faith and engage in practices to circumvent the fee estimates previously assessed to him by the County.

III. The County Responded to Holder's PIA Requests and, Therefore, This Case is Moot.

Generally, "[i]n order for a circuit court to entertain an action, a justiciable controversy must exist." *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 590, 92 A.3d 400, 483 (2014) (citing *Boyds Civic Ass'n v. Montgomery Cty. Council*, 309 Md. 683, 689, 526 A.2d 598, 601 (1987)). The Court of Appeals has defined a "justiciable controversy" as requiring that "there be 'interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded.'" *Smigiel v. Franchot*, 410 Md. 302, 320, 978 A.2d 687, 698 (quoting *Prof'l Staff Nurses Ass'n v. Dimensions Health Corp.*, 346 Md. 132, 140, 695 A.2d 158, 162 (1997)). When a justiciable controversy is lacking, a case is considered moot, and it should generally be "dismissed as a matter of course." *In re Riddlemoser*, 317 Md. 500, 506–07, 295 A.2d 231, 234–35 (1972)).

Here, there is no justiciable controversy such that the case is moot because the County—as outlined above—responded on numerous occasions to Holder's prior PIA requests which are nearly identical to the ones at issue in the instant matter. In this case, Holder's PIA requests are now moot because, the County has provided the records requested by Holder, requested a deposit from Holder which Holder was unwilling to pay, or denied Holder's request pursuant

to an exemption to the PIA.[5] *See Hammen v. Balt. Cty. Police Dept.*, 373 Md. 440, 449–50, 818 A.2d 1125, 1131 (2003). In *Hammen*, the requestor—a retired police officer—submitted a PIA request to the Baltimore County Office of Law, in which he sought surveillance videotapes taken of him. Id. at 442–43, 818 A.2d at 1127. The retired officer sought the tapes to utilize in administrative proceedings regarding the re-evaluation of his disability retirement benefits before the Baltimore County Board of Appeals ("Board of Appeals"). *Id.* at 444, 818 A.2d at 1128.

Baltimore County denied the request, indicating that the tapes could not be disclosed under the PIA. *Id.* at 443, 818 A.2d at 1127. Thereafter, the officer filed suit in the Circuit Court for Baltimore County, challenging the denial of his request. Id. The court upheld the denial, finding that the tapes were exempt from disclosure under the PIA. *Id.* The officer appealed, but the Court of Appeals intervened and granted a writ of certiorari. *Id.*

During the pendency of the litigation, the officer contacted the chairman of the Board of Appeals, requesting that the Board of Appeals intervene in the PIA proceedings. *Id.* at 446, 818 A.2d at 1129. The chairman responded, stating that he would "urge [the Assistant County Attorney] to allow [petitioner] to view the videotape he is requesting to see prior to hearing." *Id.* at 447, 818 A.2d at 1129. Subsequently, the Assistant County Attorney contacted the officer and informed him that, if he would agree to be deposed by the County in relation to

[5] Holder does not contend that the County's denials of his request were unsubstantiated; nor does he contend that the County's request that he pre-pay a fee for those requests was unreasonable. *See generally* Complaint.

a separate administrative matter, the officer would be permitted to view the tapes. *Id.* at 447, 818 A.2d at 1129–30. The police officer complied and, as a result, was permitted to inspect the tapes subject to his PIA request prior to the Court of Appeals hearing argument in the case. *Id.* at 451, 818 A.3d at 1132.

The Court of Appeals, as a threshold matter, found that the case was moot, as the retired officer received the records initially sought:

> As we just emphasized, there is apparently no longer any existing controversy, because appellant has already testified before the Board in the separate administrative proceedings relating to his disability benefits and, subsequent to his testimony before the Board in that proceeding, was able to receive and has viewed the surveillance videotapes pertaining to the re-evaluation of his disability retirement status. In other words, that which he sought under the provisions of the MPIA, he has now received.

Id. Nevertheless, the Court continued to hear the appeal, because it determined that the issue presented fell under the "capable of repetition yet evading review" exception to the mootness doctrine. *Id.* at 541–42, 818 A.2d at 1131–32 (quoting *Stevenson v. Lanham*, 127 Md. App. 597, 612, 736 A.2d 363, 372 (1999)).

Unlike *Hammen*, no exception to the mootness doctrine is applicable to the case at bar, and the County's response to the PIA requests at issue here clearly leaves this Court without the ability to fashion an effective remedy. Accordingly, the case is moot, and Defendants are entitled to summary judgment as a matter of law or, in the alternative, the Amended Complaint must be dismissed.

IV. Based on Holder's Misrepresentations and Omissions in the Amended Complaint, The County is Entitled to Sanctions.

As outlined above, the Amended Complaint in this matter is rife with material omissions and/or outright misrepresentations concerning Holder's PIA requests

to the County and the County's failure to respond. On this basis, this Court should sanction Holder and award the County attorneys' fees and reasonable costs associated with its participation in the instant matter. Under Maryland Rule 1-341, a party may be entitled to sanctions based on a plaintiff's filing a complaint in bad faith or without substantial justification. Specifically, Rule 1-341(a) provides the following:

> In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it.

Under Maryland court's interpretation of Rule 1-341(a), "a party acts in bad faith when it acts "vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons." *RTKL Associates Inc. v. Baltimore Cty.*, 147 Md. App. 647, 658, 810 A.2d 512, 518 (2002) (quoting *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268, 596 A.2d 1049 (1991)).

The federal analogue to Rule 1-341 is Federal Rule of Civil Procedure ("FRCP") 11. *Christian v. Maternal–Fetal Medicine Assocs. of Md., LLC*, 459 Md. 1, 36–37, 183 A.3d 762, 782–83 (2018). The United States District Court for the District of Maryland has specifically held that misrepresentations contained within a complaint are a suitable basis for fees under FRCP 11. *See Yorkridge-Calvert Sav. & Loan Ass'n v. Dir. of Office of Thrift Supervision*, No. CIV. B-89-3443, 1990 WL 322919, at *2 (D. Md. Dec. 27, 1990). Given the substantial omissions associated with the Complaint, combined with the fact that the

Amended Complaint is merely another vehicle through which Holder seeks to harass the County, the County is entitled to Sanctions under Rule 1-341(a).[6]

As an aside, to demonstrate how Holder has utilized the PIA to continually harass the County, subsequent to Holder filing the instant request, he has already submitted four requests that are derivative of the requests at issue in the instant case to the County.[7] *See* February 15, 2023 email from Brenda Pizanis to Holder, a copy of which is attached hereto and incorporated herein as Exhibit 5 (demonstrating the County's response to Holder's request which is derivative of the Civil War Trail Request); February 15, 2023 email from Brenda Pizanis to Holder, a copy of which is attached hereto and incorporated herein as Exhibit 26 (demonstrating the County's response to another of Holder's request, which is derivative of the Permanent Records Request); *see also* February 15, 2023 email from Holder to Kirk Downey, a copy of which is attached hereto and incorporated herein as Exhibit 27 (containing Holder's request that is derivative of the Permanent Records Request); February 15, 2023 email from Holder to Kirk Downey, a copy of which is attached hereto and incorporated herein as Exhibit 28 (containing Holder's request that is derivative of the Civil War Trail Request). Moreover, further demonstrating Holder's harassment of the County and abuse

[6] As required under Rule 1-341(b), the County will submit a verified statement setting forth the information required under Rule 1-341(b)(2)–(3) at a time when the County's entire expenses in this matter become ascertainable to a greater level of certainty.

[7] Holder continued to submit additional requests to the County, after the County filed its initial dispositive motion in response to the initial Complaint in this matter. *See supra*.

of the PIA as a process, Holder has submitted over one hundred twenty (120) PIA requests to the County since April of 2020.[8] *See* spreadsheet enumerating Holder's PIA requests to the County since April of 2020, a copy of which is attached hereto and incorporated herein as Exhibit 29.

Based on the above, it is clear that Holder is simply utilizing the PIA to harass the County. In turn, Holder has submitted the Amended Complaint which contains numerous critical omissions and misrepresentations, demonstrating only Holder's lack of candor before the Court. Given the above, this Court should enter an order awarding the County sanctions, including the payment of the County's attorney's fees and expenses in responding to this litigation, based on Holder's conduct.

CONCLUSION

For the foregoing reasons, this Court should dismiss the Amended Complaint or, in the alternative, grant summary judgment in its favor. Additionally, based on the misrepresentations and substantial omissions contained in the Amended Complaint, this Court should enter an order sanctioning Holder for his conduct.

Respectfully submitted,

KARPINSKI, CORNBROOKS & KARP, P.A.

BY: /s/ Kevin Karpinski
KEVIN KARPINSKI
AIS #9312150114

[8] As evident from the factual information submitted by the County in this matter, the number of PIA requests Holder has submitted to the County has increased substantially since the County's initial filing of its initial dispositive motion.

120 East Baltimore Street
Suite 1850
Baltimore, Maryland 21202-1617
410-727-5000
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June 2023, the foregoing was electronically filed with notice to:

Justin K. Holder
308 West Chapline Street
Sharpsburg, Maryland 21782
Pro se Plaintiff

/s/ Kevin Karpinski
Counsel for Defendants

From: Jason Parkins
To: Justin Holder
Cc: Downey, Kirk; Desaulniers, Kendall A.; Kevin Karpinski; Brenda Pizanis
Subject: RE: MPIA - "Attached in a zip file"
Date: Tuesday, November 29, 2022 12:46:00 PM
Attachments: Justin Holder - PIA 8-3-20.zip

Mr. Holder,

Attached is the .zip file responsive to your November 3rd PIA request.

Best regards,

Jason

From: Justin Holder <jholder2004@gmail.com>
Sent: Tuesday, November 29, 2022 7:22 AM
To: Kevin Karpinski <kevin@bkcklaw.com>
Cc: Downey, Kirk <kdowney@washco-md.net>; Jason Parkins <jparkins@bkcklaw.com>; Desaulniers, Kendall A. <kdesaulniers@washco-md.net>; Brenda Pizanis <BPizanis@bkcklaw.com>
Subject: Re: MPIA - "Attached in a zip file"

Mr. Karpinski,

Thank you for the update.

Respectfully,

Justin Holder

On Tue, Nov 29, 2022, 7:07 AM Kevin Karpinski <kevin@bkcklaw.com> wrote:

> Justin- It will be sent out to you today. I dictated a response to your other MPIA request on Sunday. You should have received it yesterday or you will today. Take care, Kevin
>
> Kevin Karpinski
> **Karpinski, Cornbrooks & Karp, P.A.**
> 120 East Baltimore Street
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> Cell 301-502-5834
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Mr. Karpinski,

Good evening. 2 weeks ago we met on zoom, which again I kindly thank you for your time.

At the aforementioned meeting on zoom you agreed to forward the email:

"From: O'Neal, Joshua <joneal@washco-md.net>
Sent: Monday, August 3, 2020 4:16 PM
To: Bright, Andrew <abright@washco-md.net>
Cc: McCarty, Rachael <rmccarty@washco-md.net>
Subject: RE: 23rd(?) Public information request from Mr. Holder

16 emails fall under the parameters specified by Mr. Holder. **Attached in a zip file**. -Josh" (emphasis supplied);

Directly from Mr. O'Neal to myself with no altercations, in its natural state of being.

As of today I have ***NOT*** received the "attached in a zip file" which MD. General Provisions Code Ann. § 4-203 (2020)(a) (1)"Except as provided in paragraph (2) of this subsection, the custodian **shall grant or deny the application promptly**, but not more than 30 days after receiving the application." The request was submitted Nov 3, 2022, 1:20 PM during business hours making a response due on December 5th 2022 by 1:21 PM. Your client has previously requested to the Circuit Court that I make a demand or kindly remind the County of its obligations. I choose the latter, please don't forget to calendar this request and remind your client to press the forward button. At 1:42 pm I will pen my circuit court complaint and the County can expect prompt overnight service thereof.

A NOTE ON DATA PRESERVATION "INCIDENTS"

I have sent multiple preservation letters to your client Washington County Government and hope they took proper duty and care to preserve all the critical evidence. Spoilage has caused too much ink to be spilled at the expense of the Washington County taxpayer and I write in the public interest thereof.

Thank you for your time and I thank you client Washington County for all the hard work they do for us residents.

Respectfully,

Justin Holder

On Mon, Nov 14, 2022, 9:39 AM Justin Holder <jholder2004@gmail.com> wrote:

> Mr. Karpinski,
>
> Attached in the drive link is a copy of today's meeting for your records.
>
> Respectfully,
>
> Justin Holder
>
> **video1050649449.mp4**Error! Filename not specified.
>
> On Sat, Nov 12, 2022 at 8:26 AM Justin Holder <jholder2004@gmail.com> wrote:
>
> > Mr. Karpinski,
> >
> > Noted with thanks.
> >
> > Have a great weekend.
> >
> > Respectfully,
> >
> > Justin Holder
> >
> > On Sat, Nov 12, 2022 at 7:26 AM Kevin Karpinski <kevin@bkcklaw.com> wrote:
> >
> > > Justin- Received. Please note that Ms. McCarty did not block your email. Ms. McCarty is no longer employed by Washington County and her email has been deactivated. Kevin
> > >
> > > Kevin Karpinski
> > > **Karpinski, Cornbrooks & Karp, P.A.**
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Mr. Karpinski,

Have a great weekend. See Zoom Link (NOTE I removed Ms. Mccarty she has my email blocked):

Justin Holder is inviting you to a scheduled Zoom meeting.

Topic: Washco MPIA "Attached Zip File" Meeting
Time: Nov 14, 2022 09:00 AM Eastern Time (US and Canada)

Join Zoom Meeting
https://us02web.zoom.us/j/86832998111?pwd=WllNWHFiU2p6WkdNMjFFVkcraEp2dz09

Meeting ID: 868 3299 8111
Passcode: wh4bj0

Respectfully,

Justin Holder

On Fri, Nov 11, 2022 at 9:03 AM Kevin Karpinski <kevin@bkcklaw.com> wrote:

> Justin- Option 1 is fine. Let's say 9 a.m. Kevin
>
> Kevin Karpinski
> **Karpinski, Cornbrooks & Karp, P.A.**
> 120 East Baltimore Street
> Suite 1850
> Baltimore, Maryland 21202-1617
> 410-727-5000
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>
> Mr. Karpinski,
>
> Good morning. Thank you for your email. Absolutely, would you prefer:

1)That I send a Zoom Link to a meeting that will be audio and visually recorded as we have previously transacted and agreed to; or

2)Something more informal and confidential for purposes of settlement, *eg*., I was planning on taking a hike in the afternoon and you are more than welcome to join me.

In either case I would need a time frame and I can make something work for you, preferably in the morning if you would select option 1.

Have a great weekend.

Respectfully,

Justin Holder

On Fri, Nov 11, 2022 at 7:14 AM Kevin Karpinski <kevin@bkcklaw.com> wrote:

> Justin- Do you have time on Monday to discuss the below MPIA request? Thanks, Kevin
>
> Kevin Karpinski
> **Karpinski, Cornbrooks & Karp, P.A.**
> 120 East Baltimore Street
> Suite 1850
> Baltimore, Maryland 21202-1617
> 410-727-5000
> Fax 410-727-0861
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> This electronic message transmission contains information that may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.
>
> I am writing to kindly request Public Information in accordance with MD. General Provisions Code Ann. § 4-101. Please provide the following records:
>
> **In referring to the email record;**

"From: O'Neal, Joshua <joneal@washco-md.net>
Sent: Monday, August 3, 2020 4:16 PM
To: Bright, Andrew <abright@washco-md.net>
Cc: McCarty, Rachael <rmccarty@washco-md.net>
Subject: RE: 23rd(?) Public information request from Mr. Holder

16 emails fall under the parameters specified by Mr. Holder. **Attached in a zip file**. -Josh" (emphasis supplied);

please provide the ("**Attached in a zip file**") record as it was provided in the email record *supra.*

Please provide a time and cost estimate in 10 days.

Please see ***Public Interest in Brady Evidence*** attached hereto and incorporated herein by reference.

Thank you in advance for all the hard work the DNR and its custodian does for the great state of Maryland.

Respectfully,

Justin Holder

From:	Justin Holder
To:	Kevin Karpinski
Cc:	Jason Parkins; Downey, Kirk; Desaulniers, Kendall A.; Brenda Pizanis
Subject:	Re: MPIA - "Attached in a zip file"
Date:	Wednesday, November 30, 2022 9:33:55 AM
Attachments:	Public Interest in Brady Evidence.pdf

Mr. Karpinski,

Good morning and thank you for the email. If you remember our Nov. 14th Zoom meeting was audio and visually recorded (which you consented to by the Zoom disclaimer upon entry thereto) we made the agreement in the youtube link:

https://www.youtube.com/watch?v=0WBwp_P72-U

I clarify you are going to forward Josh O'Neal's email to Andrew Bright directly to me and you reply "YES"

I offer the following observation:

1)The most simplistic, least burdensome and direct process to answer this Public Information Request would have been for Mr. Josh O'Neal to open the original email, press forward and type in my email address 10 seconds and DONE.

2) For whatever unknown reasons the Washington County Government, the Custodian or its Attorneys and agents do not want to produce the email. They would rather produce the "modified" zip file that was created yesterday; which is not what my request asked for.

3) "It is often true that a requestor is at a disadvantage in formulating a PIA request because the requestor does not know what records the agency keeps or how it keeps them. It is part of every agency's mission to be as transparent as the State's sunshine laws, including the PIA, require it to be. ***A public records request is not an occasion for a game of hide and seek.*** For that reason, if possible, an agency should in good faith provide some reasonable assistance to the requestor in refining the request for the records the requestor seeks. Of course, nothing requires the requestor to accept such assistance." (EMPHASIS IS MINE!!!) *Glass v. Anne Arundel Co.*, 160 A.3d 658, 453 Md. 201 (2017).

4) Could we please just stick to our agreement and take the 10 seconds to press the forward button, rather than bring this entire issue to the Circuit Court.

PUBLIC INTEREST IN TRANSPARENCY

With all that has been said and done in relation to these emails from alleged wiretapping, obstruction of justice, extortion/malicious prosecution and more; and the Counties admitted deletion of material evidence related thereto which is already pending in the Circuit Court it would be in the interest of justice and transparency to be as forthcoming as possible with this request. WHAT IS THE COUNTY HIDING FROM? THE PUBLIC MUST KNOW!!!! Please see attached ***Public Interest in Brady Evidence*** incorporated herein by reference.

I thank the County and its agent's and custodian's for all the hard work in answering this request, I just can not for the life of me understand why it was necessary or how it benefited the taxpayers. Please have

a wonderful day.

Respectfully,

Justin Holder

On Wed, Nov 30, 2022 at 8:49 AM Kevin Karpinski <kevin@bkcklaw.com> wrote:

> Justin- I agreed to send you another copy of the Zip file which I have done. Mr. O'Neal is not sending it to you. You have the documents in the Zip file. Kevin
>
> ---
>
> **From:** Justin Holder <jholder2004@gmail.com>
> **Date:** Tuesday, November 29, 2022 at 1:09 PM
> **To:** Jason Parkins <jparkins@bkcklaw.com>
> **Cc:** Downey, Kirk <kdowney@washco-md.net>, Desaulniers, Kendall A. <kdesaulniers@washco-md.net>, Kevin Karpinski <kevin@bkcklaw.com>, Brenda Pizanis <BPizanis@bkcklaw.com>
> **Subject:** Re: MPIA - "Attached in a zip file"
>
> Mr. Parkins,
>
> I appreciate the response, however this is not what we agreed to. In the video/audio recorded zoom conference Washington county custodian's agent agreed to jholder2004@gmail.com directly from Mr. O'Neal to myself with no altercations, in its natural state of being. That is not what I was sent. Could we kindly just stick to the agreement please?
>
> Respectfully,
>
> Justin Holder
>
> On Tue, Nov 29, 2022 at 12:46 PM Jason Parkins <jparkins@bkcklaw.com> wrote:
>
> > Mr. Holder,
> >
> > Attached is the .zip file responsive to your November 3rd PIA request.

Best regards,

Jason

From: Justin Holder <jholder2004@gmail.com>
Sent: Tuesday, November 29, 2022 7:22 AM
To: Kevin Karpinski <kevin@bkcklaw.com>
Cc: Downey, Kirk <kdowney@washco-md.net>; Jason Parkins <jparkins@bkcklaw.com>; Desaulniers, Kendall A. <kdesaulniers@washco-md.net>; Brenda Pizanis <BPizanis@bkcklaw.com>
Subject: Re: MPIA - "Attached in a zip file"

Mr. Karpinski,

Thank you for the update.

Respectfully,

Justin Holder

On Tue, Nov 29, 2022, 7:07 AM Kevin Karpinski <kevin@bkcklaw.com> wrote:

> Justin- It will be sent out to you today. I dictated a response to your other MPIA request on Sunday. You should have received it yesterday or you will today. Take care, Kevin
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> Kevin Karpinski
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> **Karpinski, Cornbrooks & Karp, P.A.**
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Mr. Karpinski,

Good evening. 2 weeks ago we met on zoom, which again I kindly thank you for your time.

At the aforementioned meeting on zoom you agreed to forward the email:

"From: O'Neal, Joshua <joneal@washco-md.net>
Sent: Monday, August 3, 2020 4:16 PM
To: Bright, Andrew <abright@washco-md.net>
Cc: McCarty, Rachael <rmccarty@washco-md.net>
Subject: RE: 23rd(?) Public information request from Mr. Holder

16 emails fall under the parameters specified by Mr. Holder. **Attached in a zip file**. -Josh" (emphasis supplied);

Directly from Mr. O'Neal to myself with no altercations, in its natural state of being.

As of today I have ***NOT*** received the "attached in a zip file" which MD. General Provisions Code Ann. § 4-203 (2020)(a) (1)"Except as provided in paragraph (2) of this subsection, the custodian **shall grant or deny the application promptly**, but not more than 30 days after receiving the application." The request was submitted Nov 3, 2022, 1:20 PM during business hours making a response due on December 5th 2022 by 1:21 PM. Your client has previously requested to the Circuit Court that I make a demand or kindly remind the County of its obligations. I choose the latter, please don't forget to calendar this request and remind your client to press the forward button. At 1:42 pm I will pen my circuit court complaint and the County can expect prompt overnight service thereof.

A NOTE ON DATA PRESERVATION "INCIDENTS"

I have sent multiple preservation letters to your client Washington County Government and hope they took proper duty and care to preserve all the critical evidence. Spoilage has caused too much ink to be spilled at the expense of the Washington County taxpayer and I write in the public interest thereof.

Thank you for your time and I thank you client Washington County for all the hard work they do for us residents.

Respectfully,

Justin Holder

On Mon, Nov 14, 2022, 9:39 AM Justin Holder <jholder2004@gmail.com> wrote:

> Mr. Karpinski,
>
> Attached in the drive link is a copy of today's meeting for your records.
>
> Respectfully,
>
> Justin Holder
>
> **video1050649449.mp4**Error! Filename not specified.
>
> On Sat, Nov 12, 2022 at 8:26 AM Justin Holder <jholder2004@gmail.com> wrote:
>
> > Mr. Karpinski,
> >
> > Noted with thanks.

Have a great weekend.

Respectfully,

Justin Holder

On Sat, Nov 12, 2022 at 7:26 AM Kevin Karpinski <kevin@bkcklaw.com> wrote:

> Justin- Received. Please note that Ms. McCarty did not block your email. Ms. McCarty is no longer employed by Washington County and her email has been deactivated. Kevin
>
> Kevin Karpinski
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>
> Mr. Karpinski,
>
> Have a great weekend. See Zoom Link (NOTE I removed Ms. Mccarty she has my

email blocked):

Justin Holder is inviting you to a scheduled Zoom meeting.

Topic: Washco MPIA "Attached Zip File" Meeting
Time: Nov 14, 2022 09:00 AM Eastern Time (US and Canada)

Join Zoom Meeting
https://us02web.zoom.us/j/86832998111?pwd=WllNWHFiU2p6WkdNMjFFVkcraEp2dz09

Meeting ID: 868 3299 8111
Passcode: wh4bj0

Respectfully,

Justin Holder

On Fri, Nov 11, 2022 at 9:03 AM Kevin Karpinski <kevin@bkcklaw.com> wrote:

> Justin- Option 1 is fine. Let's say 9 a.m. Kevin
>
> Kevin Karpinski
>
> **Karpinski, Cornbrooks & Karp, P.A.**
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> 120 East Baltimore Street
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Mr. Karpinski,

Good morning. Thank you for your email. Absolutely, would you prefer:

1)That I send a Zoom Link to a meeting that will be audio and visually recorded as we have previously transacted and agreed to; or

2)Something more informal and confidential for purposes of settlement, *eg*., I was planning on taking a hike in the afternoon and you are more than welcome to join me.

In either case I would need a time frame and I can make something work for you, preferably in the morning if you would select option 1.

Have a great weekend.

Respectfully,

Justin Holder

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> Justin- Do you have time on Monday to discuss the below MPIA request? Thanks, Kevin

Kevin Karpinski

Karpinski, Cornbrooks & Karp, P.A.

120 East Baltimore Street

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I am writing to kindly request Public Information in accordance with MD. General Provisions Code Ann. § 4-101. Please provide the following records:

In referring to the email record;

"From: O'Neal, Joshua <joneal@washco-md.net>
Sent: Monday, August 3, 2020 4:16 PM
To: Bright, Andrew <abright@washco-md.net>
Cc: McCarty, Rachael <rmccarty@washco-md.net>
Subject: RE: 23rd(?) Public information request from Mr. Holder

16 emails fall under the parameters specified by Mr. Holder. **Attached in a zip file**. -Josh" (emphasis supplied);

please provide the ("**Attached in a zip file**") record as it was provided in the email record *supra.*

Please provide a time and cost estimate in 10 days.

Please see ***Public Interest in Brady Evidence*** attached hereto and incorporated herein by reference.

Thank you in advance for all the hard work the DNR and its custodian does for the great state of Maryland.

Respectfully,

Justin Holder

Jason Parkins

From: Justin Holder <jholder2004@gmail.com>
Sent: Monday, December 5, 2022 12:25 PM
To: Jason Parkins
Subject: Re: FW: 23rd(?) Public information request from Mr. Holder

Mr. Parkins,

Received but again this is not exactly what was agreed to.

I see "**From:** Bright, Andrew <abright@washco-md.net>
Sent: Thursday, November 10, 2022 2:01 PM
To: Downey, Kirk <kdowney@washco-md.net>
Cc: Desaulniers, Kendall A. <kdesaulniers@washco-md.net>
Subject: FW: 23rd(?) Public information request from Mr. Holder" but where is the email from Mr. Downey to you in the chain?

Please have Mr. O'Neal forward me the August 3rd 2020 email directly.

Respectfully,

Justin Holder

On Mon, Dec 5, 2022 at 11:59 AM Jason Parkins <jparkins@bkcklaw.com> wrote:

> Mr. Holder,
>
> In response to your recent PIA request, the August 3, 2020 email between Mr. O'Neal and Mr. Bright is below, including the .zip file which was attached thereto.
>
> Best regards,
>
> Jason
>
> ---
>
> **From:** Bright, Andrew <abright@washco-md.net>
> **Sent:** Thursday, November 10, 2022 2:01 PM
> **To:** Downey, Kirk <kdowney@washco-md.net>
> **Cc:** Desaulniers, Kendall A. <kdesaulniers@washco-md.net>
> **Subject:** FW: 23rd(?) Public information request from Mr. Holder

From: O'Neal, Joshua <joneal@washco-md.net>
Sent: Monday, August 3, 2020 4:17 PM
To: Bright, Andrew <abright@washco-md.net>
Cc: McCarty, Rachael <rmccarty@washco-md.net>
Subject: RE: 23rd(?) Public information request from Mr. Holder

16 emails fall under the parameters specified by Mr. Holder. Attached in a zip file.

-Josh

From: Bright, Andrew <abright@washco-md.net>
Sent: Monday, August 3, 2020 3:21 PM
To: O'Neal, Joshua <joneal@washco-md.net>
Cc: McCarty, Rachael <rmccarty@washco-md.net>
Subject: Fw: 23rd(?) Public information request from Mr. Holder

Josh

See PIA request below. As I have no idea how to define "county official" we should probably search for email correspondence with this person to or from any county employee for the given timeframe.

Thanks,

Andy

From: Justin Holder <jholder2004@gmail.com>
Sent: Monday, August 3, 2020 2:32 PM
To: Bright, Andrew <abright@washco-md.net>; Downey, Kirk <kdowney@washco-md.net>
Subject: Public information request

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To whom it may concern:

Please provide all email correspondance from the following email address "Morral7@msn.com"and any sheriff, deputy, county official from May 19th to present.

Please provide time and cost in 10 days

Thank you,

Justin Holder

E-FILED; Washington Circuit Court
Docket: 6/15/2023 4:50 PM; Submission: 6/15/2023 4:50 PM
Envelope: 13069961

Jacobson, Kimberly D.

From: Justin Holder <jholder2004@gmail.com>
Sent: Friday, January 7, 2022 3:45 PM
To: McCarty, Rachael
Cc: Downey, Kirk; Jacobson, Kimberly D.
Subject: Re: MPIA - Letters opposing Civil War Rail Trail

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Any claims of being a County official or employee should be disregarded.

Ms. McCarty,

Thank you for the update. I wish the staff member well, and thank the COunty Government for the good job you do for the Public. Please enjoy your weekend.

Respectfully,

Justin Holder

On Fri, Jan 7, 2022 at 3:42 PM McCarty, Rachael <rmccarty@washco-md.net> wrote:

> Mr. Holder,
>
> The County staff member whom is knowledgeable about this project and can provide applicable records is out for an undetermined amount of time due to a family emergency.
>
> As soon as we are able to obtain all the records you seek, we will promptly provide them.
>
> Thank you for your patience and understanding.
>
> Washington County MARYLAND
>
> Rachael McCarty
>
> Legal Secretary
>
> Office of the County Attorney

Washington County Administration Complex

100 West Washington Street, Suite 1101

Hagerstown, MD 21740

P: (240) 313-2233 | F: 240-313-2231

www.washco-md.net

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From: Justin Holder <jholder2004@gmail.com>
Sent: Saturday, December 11, 2021 8:44 PM
To: McCarty, Rachael <rmccarty@washco-md.net>
Cc: Downey, Kirk <kdowney@washco-md.net>
Subject: MPIA - Letters opposing Civil War Rail Trail

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Ms. McCarty,

I was reviewing the BOCC records and found this report attached.

On page 13 of the attached document:

"Question: On May 12, 2012, the County sent out **800 notification letters to owners of all properties within 500 feet of the proposed trail.** Hence, consider the response of only **80 residents who oppose** is rather miniscule compared to the 700 county residents who are in favor of the trail. Why do the preferences of 80 residents outweigh the preferences of 700 residents? Why do the preferences of 80 residents, most of whom live in south county, outweigh the preferences of 345 residents who live in south county – especially when County Planning says south county has a shortage of walking and jogging areas? "

While I share Mr. Woods ambition to provide trails, I would like to better understand the opposition.

I appreciate all the access to documents the County provides. I would like to review these documents in the least burdensome method possible. I would gladly stop in and scan the documents with a phone if the file is only hard copies. If by chance this file and list of 800 "interested parties", and response is available electronically could I please obtain a copy.

I appreciate all the good work everyone does at the County. Thank you kindly in advance for your assistance.

Respectfully,

Justin Holder

Jacobson, Kimberly D.

From: Jacobson, Kimberly D.
Sent: Tuesday, January 18, 2022 4:22 PM
To: Justin Holder
Cc: Kirk C. Downey
Subject: RE: MPIA - Letters opposing Civil War Rail Trail

Good afternoon,

Due to ongoing family matters the county personnel has returned in a part-time capacity. Our office will notify you as soon as we are able to determine the volume of responsive documents and the estimated reproduction costs.

Thank you,

Kimberly Jacobson
Legal Assistant
100 W. Washington Street, Suite 1101
Hagerstown, Maryland 21740
P: (240) 313-2234
www.washco-md.net

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From: Justin Holder <jholder2004@gmail.com>
Sent: Monday, January 17, 2022 9:30 AM
To: McCarty, Rachael <rmccarty@washco-md.net>
Cc: Downey, Kirk <kdowney@washco-md.net>; Jacobson, Kimberly D. <kjacobson@washco-md.net>
Subject: Re: MPIA - Letters opposing Civil War Rail Trail

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Ms. McCarty,

I hope all is well at the County.

I was writing to follow up on our email exchange 10 days past.

Is the county personnel back in place to respond, to the request in the subject line?

Respectfully,

Justin Holder

On Fri, Jan 7, 2022, 3:44 PM Justin Holder <jholder2004@gmail.com> wrote:

> Ms. McCarty,
>
> Thank you for the update. I wish the staff member well, and thank the COunty Government for the good job you do for the Public. Please enjoy your weekend.
>
> Respectfully,
>
> Justin Holder
>
> On Fri, Jan 7, 2022 at 3:42 PM McCarty, Rachael <rmccarty@washco-md.net> wrote:
>
> > Mr. Holder,
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> > The County staff member whom is knowledgeable about this project and can provide applicable records is out for an undetermined amount of time due to a family emergency.
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> > As soon as we are able to obtain all the records you seek, we will promptly provide them.
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> > Thank you for your patience and understanding.
> >
> > Washington County MARYLAND
> >
> > Rachael McCarty
> >
> > Legal Secretary
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> > Office of the County Attorney
> >
> > Washington County Administration Complex
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> > 100 West Washington Street, Suite 1101
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> > Hagerstown, MD 21740

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From: Justin Holder <jholder2004@gmail.com>
Sent: Saturday, December 11, 2021 8:44 PM
To: McCarty, Rachael <rmccarty@washco-md.net>
Cc: Downey, Kirk <kdowney@washco-md.net>
Subject: MPIA - Letters opposing Civil War Rail Trail

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Ms. McCarty,

I was reviewing the BOCC records and found this report attached.

On page 13 of the attached document:

"Question: On May 12, 2012, the County sent out **800 notification letters to owners of all properties within 500 feet of the proposed trail.** Hence, consider the response of only **80 residents who oppose** is rather miniscule compared to the 700 county residents who are in favor of the trail. Why do the preferences of 80 residents outweigh the preferences of 700 residents? Why do the preferences of 80 residents, most of whom live in south county, outweigh the preferences of 345

residents who live in south county – especially when County Planning says south county has a shortage of walking and jogging areas? "

While I share Mr. Woods ambition to provide trails, I would like to better understand the opposition.

I appreciate all the access to documents the County provides. I would like to review these documents in the least burdensome method possible. I would gladly stop in and scan the documents with a phone if the file is only hard copies. If by chance this file and list of 800 "interested parties", and response is available electronically could I please obtain a copy.

I appreciate all the good work everyone does at the County. Thank you kindly in advance for your assistance.

Respectfully,

Justin Holder

E-FILED; Washington Circuit Court
Docket: 6/15/2023 4:50 PM; Submission: 6/15/2023 4:50 PM
Envelope: 13069961

Gmail

Justin Holder <jholder2004@gmail.com>

Civil War Rail Trail

3 messages

Kevin Karpinski <kevin@bkcklaw.com> Thu, Jan 27, 2022 at 8:07 AM
To: Justin Holder <jholder2004@gmail.com>

Justin- The County staff has begun researching documents responsive to the above MPIA request. It has been determined that there are thousands of responsive documents. Under the circumstances, we can proceed in one of two methods. You can make a deposit of $500 and the County will continue to work on locating and copying the responsive documents. In the alternative, you can narrow the request so that it is not so voluminous. Please advise. Kevin

Kevin Karpinski

Karpinski, Cornbrooks & Karp, P.A.

120 East Baltimore Street

Suite 1850

Baltimore, Maryland 21202-1617

410-727-5000

Fax 410-727-0861

Cell 301-502-5834

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Justin Holder <jholder2004@gmail.com> Thu, Jan 27, 2022 at 9:06 AM
To: Kevin Karpinski <kevin@bkcklaw.com>
Bcc: Adam Greivell <adam@greivelllawoffice.com>, Jacob Weddle <jweddle@gordonsimmons.com>

Mr. Karpinski,

Thank you for your January 27th, 2022 response. I have attached the MPIA in the subject line sent December 7th, 2021 as a courtesy. Without waiving any of my rights I will discuss the continued violation of the MPIA in good faith, as

E. 129

Exhibit 6

always with my Public servants.

1) I was never provided any fee estimate, and would request a waiver of the fees.

2) I am certainly willing to target my search, and will do so expediently upon production of a list of the total responsive records, please provide:
a) The initial form letter sent.
b)The List of recipients to the initial letter.
c)The list of responses received by the county.

Upon review of that information I will promptly retarget and narrow my search to one that is efficient and manageable.

Given this request has long past 30 days, I would kindly ask the Government to expedite this request.

Again for the Public's Convenience:

MD. General Provisions Code Ann. § 4-203 (2020)(b) (2) " If the custodian reasonably believes that it will take more than 10 working days to produce the public record, the custodian shall indicate in writing or by electronic mail within 10 working days after receipt of the request:

(i) the amount of time that the custodian anticipates it will take to produce the public record;

(ii) an estimate of the range of fees that may be charged to comply with the request for public records; and

(iii) the reason for the delay."

MD. General Provisions Code Ann. § 4-203 (2020)(b (3) **"Failure to produce the public record in accordance with this subsection constitutes a denial** of an application that may not be considered the result of a bona fide dispute unless the custodian **has complied with paragraph (2)** of this subsection **and** is working with the applicant in good faith."

The County has not complied with aforesaid subsection (2) as the 27 day delay in response only complied with " (iii) the reason for the delay." therefore by law this is a denial. The County is once again in default of their obligations under the MPIA. I kindly and respectfully request redress in 10 days.

Respectfully,

Justin Holder

[Quoted text hidden]

Gmail - MPIA - Letters opposing Civil War Rail Trail.pdf

E. 130
Exhibit 6

177K

Justin Holder <jholder2004@gmail.com> Tue, Feb 8, 2022 at 8:53 AM
To: Kevin Karpinski <kevin@bkcklaw.com>
Bcc: Adam Greivell <adam@greivelllawoffice.com>, Jacob Weddle <jweddle@gordonsimmons.com>

Mr. Karpinski,

On Thu, Jan 27, 2022 you wrote to me in response to a December 7th, 2021 MPIA reference "Civil War Rail Trail" explaining that "It has been determined that there are thousands of responsive documents."

On Thu, Jan 27, 2022 I wrote back and requested *inter alia "* I am certainly willing to target my search, and will do so expediently upon production of a list of the total responsive records, please provide:
a) The initial form letter sent.
b)The List of recipients to the initial letter.
c)The list of responses received by the county."

It has been 10 days and I have not gotten any response from the agency or its representatives and assigns. I write to kindly remind the County of its default of obligations under the Maryland Public Information Act and respectfully request redress of same.

##
######
I offer the following settlement options in good faith, without waiving any rights to prosecute the alleged willful denial and heinous violations of the Maryland Public Information Act:

In the Alternative, I assume the records are all stored electronically, and as such request complete production of the thousands of documents in a drop box, drive, FTP or other data transfer methods. I will sort through them myself and not burden the County.

In a 3rd Alternative, In the case the documents are in paper form only, I will come to the storage facility and physically inspect the records using my own scanning device to copy and save the records for offsite review.

Settlement Offer Expires on February 11th, 2022 at 5:00 PM Eastern Standard Time
##
######

I appreciate all the hard work and dedication of the Public servants. I wish the County and employees well.

Respectfully,

Justin Holder
[Quoted text hidden]

E. 131
Exhibit 6

Gmail Justin Holder <jholder2004@gmail.com>

MPIA - Letters opposing Civil War Rail Trail

Justin Holder <jholder2004@gmail.com> Sat, Dec 11, 2021 at 8:43 PM
To: "McCarty, Rachael" <rmccarty@washco-md.net>
Cc: "Downey, Kirk" <kdowney@washco-md.net>
[redacted]

Ms. McCarty,

I was reviewing the BOCC records and found this report attached.

On page 13 of the attached document:

"Question: On May 12, 2012, the County sent out **800 notification letters to owners of all properties within 500 feet of the proposed trail.** Hence, consider the response of only **80 residents who oppose** is rather miniscule compared to the 700 county residents who are in favor of the trail. Why do the preferences of 80 residents outweigh the preferences of 700 residents? Why do the preferences of 80 residents, most of whom live in south county, outweigh the preferences of 345 residents who live in south county – especially when County Planning says south county has a shortage of walking and jogging areas? "

While I share Mr. Woods ambition to provide trails, I would like to better understand the opposition.

I appreciate all the access to documents the County provides. I would like to review these documents in the least burdensome method possible. I would gladly stop in and scan the documents with a phone if the file is only hard copies. If by chance this file and list of 800 "interested parties", and response is available electronically could I please obtain a copy.

I appreciate all the good work everyone does at the County. Thank you kindly in advance for your assistance.

Respectfully,

Justin Holder

0_bocc170801a (1).pdf
8808K

E. 132
Exhibit 6

MPIA - Letters opposing Civil War Rail Trail

McCarty, Rachael <rmccarty@washco-md.net> Fri, Jan 7, 2022 at 3:42 PM
To: Justin Holder <jholder2004@gmail.com>
Cc: "Downey, Kirk" <kdowney@washco-md.net>, "Jacobson, Kimberly D." <kjacobson@washco-md.net>

Mr. Holder,

The County staff member whom is knowledgeable about this project and can provide applicable records is out for an undetermined amount of time due to a family emergency.

As soon as we are able to obtain all the records you seek, we will promptly provide them.

Thank you for your patience and understanding.

Washington County MARYLAND

Rachael McCarty

Legal Secretary

Office of the County Attorney

Washington County Administration Complex

100 West Washington Street, Suite 1101

Hagerstown, MD 21740

P: (240) 313-2233 | F: 240-313-2231

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From: Justin Holder <jholder2004@gmail.com>
Sent: Saturday, December 11, 2021 8:44 PM
To: McCarty, Rachael <rmccarty@washco-md.net>
Cc: Downey, Kirk <kdowney@washco-md.net>
Subject: MPIA - Letters opposing Civil War Rail Trail

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[Quoted text hidden]

E. 133
Exhibit 6

Gmail Justin Holder <jholder2004@gmail.com>

MPIA - Letters opposing Civil War Rail Trail

Justin Holder <jholder2004@gmail.com> Mon, Jan 17, 2022 at 9:30 AM
To: "McCarty, Rachael" <rmccarty@washco-md.net>
Cc: "Downey, Kirk" <kdowney@washco-md.net>, "Jacobson, Kimberly D." <kjacobson@washco-md.net>

Ms. McCarty,

I hope all is well at the County.

I was writing to follow up on our email exchange 10 days past.

Is the county personnel back in place to respond, to the request in the subject line?

Respectfully,

Justin Holder
[Quoted text hidden]

E. 134
Exhibit 6

E-FILED; Washington Circuit Court
Docket: 6/15/2023 4:50 PM; Submission: 6/15/2023 4:50 PM
Envelope: 13069961

Brenda Pizanis

From: Brenda Pizanis
Sent: Monday, March 14, 2022 12:52 PM
To: Justin Holder
Cc: Jason Parkins; Kevin Karpinski
Subject: 341-125, PIA Request to Washington County
Attachments: Holder 031422 .pdf

Good afternoon:

Please find attached a letter from Kevin Karpinski.

Brenda Pizanis
Administrative Assistant to Kevin Karpinski
Karpinski, Cornbrooks & Karp, P.A.
120 East Baltimore Street
Suite 1850
Baltimore, Maryland 21202-1617
410-727-5000
Fax 410-727-0861

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KARPINSKI, CORNBROOKS & KARP, P.A.

ATTORNEYS AT LAW
120 East Baltimore Street, Suite 1850
Baltimore, Maryland 21202-1617

KEVIN KARPINSKI *
E. I. CORNBROOKS, IV

DANIEL M. SCAPARDINE
JASON C. PARKINS
ASHLEY C. FISHER
MEGAN E. SCHUMM

* Admitted in MD and DC

Telephone 410-727-5000
Facsimile 410-727-0861
Email: kevin@bkcklaw.com
Website: www.kcklegal.com

DANIEL KARP
MICHAEL B. RYND
OF COUNSEL

RICHARD T. COLARESI
RETIRED

March 14, 2022

via email Jholder2004@gmail.com only
Justin Holder

RE: 341-125
PIA Request to Washington County

Dear Mr. Holder:

Washington County (the "County") received your request, made pursuant to the Maryland Public Information Act, Maryland Code § 4-101 *et. seq.* of the General Provisions Article. In your request, you sought any records related to the January 27, 2022 email from Kevin Karpinski that states "County staff has begun research documents responsive to the above MPIA request. It has been determined that there are thousand of responsive documents." In addition, you sought all "index[e]s, tabulation, correspondence, reports that were used to determine that 'thousands of responsive documents exist[.]"

Attached is an email from a County Employee, Andrew Eshleman, which provides the basis for the assessment. As you can see, Mr. Eshleman indicated that the file associated with the records you requested is over 1 gigabyte in size. Based on its size, Mr. Eshleman estimated that the file consists of over a thousand pages of responsive documents.

Feel free to contact me if you have any concerns about this letter. If you have any questions regarding the Public Information Act process, you may also contact the Public Access Ombudsman pursuant to Maryland Code, §4-1B-01 of the General Provisions Article.

Sincerely,

KARPINSKI, CORNBROOKS & KARP, P.A.

/s/

By: Kevin Karpinski

KK:jp

Attachment

E. 136
Exhibit 7

341-125

Jacobson, Kimberly D.

From: Eshleman, Andrew
Sent: Wednesday, January 26, 2022 11:12 AM
To: Jacobson, Kimberly D.
Subject: RE: MPIA - Letters opposing Civil War Rail Trail

That would take more than 15 minutes for me to open each up and total, but I'd say project information and correspondence and presentations numbers thousands of pages. It is 1 GB of data.

From: Jacobson, Kimberly D.
Sent: Wednesday, January 26, 2022 11:10 AM
To: Eshleman, Andrew <aeshleman@washco-md.net>
Subject: RE: MPIA - Letters opposing Civil War Rail Trail

I hate to be a pain about this, but do you happen to have an estimate on how many pages of responsive documents there would be? Whether we provide the documents hard copy vs electronically, we still charge a per page "copy" fee. In order to calculate an estimate cost for reproduction for Mr. Holder I would need to have an estimate on the number of pages.

Washington County MARYLAND
Kimberly Jacobson
Legal Secretary
100 W. Washington Street, Suite 1101
Hagerstown, Maryland 21740
P: (240) 313-2234
www.washco-md.net

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From: Eshleman, Andrew <aeshleman@washco-md.net>
Sent: Wednesday, January 26, 2022 11:02 AM
To: Jacobson, Kimberly D. <kjacobson@washco-md.net>
Subject: RE: MPIA - Letters opposing Civil War Rail Trail

Kim,

I could load it on a flash drive. That would be several dollars for that.

Andrew

E. 137
Exhibit 7

Jason Parkins

From: Justin Holder <jholder2004@gmail.com>
Sent: Wednesday, April 13, 2022 4:24 PM
To: Downey, Kirk
Cc: Brenda Pizanis; Jason Parkins; Kevin Karpinski
Subject: Re: 342-102, PIA Request to Washington County regarding the Civil War Trail
Attachments: Exhibit 2 - Gmail - Civil War Rail Trail.pdf; Exhibit 6 - Gmail - 342-102, PIA Request to Washington County regarding the Civil War Trail.pdf

Mr. Downey,

Good afternoon. It was nice to say hi at the Courthouse Monday! I appreciate the hard work you do for the people of this County, Mr. Downey. I also appreciate your correspondence, and write to you as the custodian of Public Records.

I received a response to my March 14th, 2022 correspondence from your agent Mr. Karpinski attached as ***Exhibit 6 - Gmail - 342-102, PIA Request to Washington County regarding the Civil War Trail*** attached hereto and incorporated herein by reference. Mr. Karpinksi was responding on behalf of the Honorable Custodian in relation to the December 11th, 2021 MPIA request, ***Exhibit 2 - Gmail - Civil War Rail Trail*** attached hereto and incorporated herein by reference.

I appreciate your agent's thoughtful response. Specifically your agent summarized our current dispute quite well as a request to target the search by the custodian and the requestor's response of;

"and will do so expediently upon production of a list of the total responsive records[.]" You then requested the following: 1) "[t]he "initial form letter sent[;]" 2) "[t]he List of recipients to the initial letter[;]" and 3) "[t]he list of responses received by the [C]ounty.".

In analyzing your agent's response, I acknowledge and respect the law as stated:

"I note that the PIA does not require an agency to 'create, compile, or program a new record,' in response to a request. *Comptroller of Treasury v. Immanuel*, 216 Md. App. 259, 266, 85 A.3d 878, 882 (2014); *see also* Md. Code, General Provisions § 4-205(c)(4)(iii).";

but dispute explicit the characterization I was requesting the County to "create, compile, or program a new record" when retargeting my request.

Please note in the dicta from *Comptroller of Treasury v. Immanuel*, 216 Md. App. 259, 266, 85 A.3d 878, 882 (2014) your agent cited;

Mr. Immanual asked for more than a list of responsive records, Mr Immanual requested a record be made in a certain order to circumvent other policy:

"a printout of all unclaimed property accounts" that had been unclaimed for two years or longer. In addition to requesting publicly available information — specifically, the names and last-known addresses of those entitled to the property—he asked the Comptroller to format the list "from largest account values to smallest account values" and to provide him "with the listing of the top 5,000 accounts after this formatting is done." In his request, Mr. Immanuel acknowledged that the Public Information Act prohibited him from receiving "information concerning the specific value of each account or a description of the property," and he asked that, once the list was sorted, the specific values be removed. Although the Comptroller, with the help of his information technology ("IT") department, has the ability to perform Mr. Immanuel's request, the Comptroller denied it."

in reviewing the *Abandoned Property Act* the Court reversed:

"With these two caveats, we hold that Mr. Immanuel is entitled to the data that he seeks and that the Comptroller erred in denying his request. Our decisions overlap substantially with the circuit court's decision, but we cannot affirm its judgment. Instead, because the circuit court held that the Comptroller had not raised

the "new record" argument and ordered the Comptroller to produce the data sorted by dollar value, we reverse the judgment below and remand for further proceedings for the limited purpose of allowing the circuit court to determine the precise boundaries of the production the Comptroller must make to Mr. Immanuel. In practical terms, Mr. Immanuel should emerge on remand with a list of claims that tracks the Comptroller's disclosure obligations under the Abandoned Property Act, but that is not sorted by dollar value."

The Morral of the story is County Engineer Andrew Eichelman has identified 1 gigabyte of data responsive to my December 11th, 2020 request, and the County is in default of its obligations.

See further MD Gen Provisions Code § 4-205(c)(1) " Except as provided in paragraph (2) [Paragraph 2 is applicable to SDAT] of this subsection, **the custodian of a public record shall provide an applicant with a copy of the public record in a searchable and analyzable electronic format** if:

(i) the public record is in a searchable and analyzable electronic format; [As Mr. Eschelman has identified]

(ii) the applicant requests a copy of the public record in a searchable and analyzable electronic format; and [As the applicant has done]

(iii) the custodian is able to provide a copy of the public record, in whole or in part, in a searchable and analyzable electronic format that does not disclose:

1. confidential or protected information for which the custodian is required to deny inspection in accordance with Subtitle 3, Parts I through III of this title; or

2. information for which a custodian has chosen to deny inspection in accordance with Subtitle 3, Part IV of this title." [Emphasis Added]

AND SEE FURTHER;

MD Gen Provisions Code § 4-205(5) If a public record exists in a searchable and analyzable electronic format, the act of a custodian providing a portion of the public record in a searchable and analyzable electronic format **does not constitute creating a new public record.**

(d) (1) The copy, printout, or photograph **shall be made**:

(i) while the public record is in the custody of the custodian; and

(ii) whenever practicable, where the public record is kept.

(2) The official custodian may set a reasonable time schedule to make copies, printouts, or photographs." [Emphasis Added].

I have made a good faith search of MD Gen Provisions Code § 4-301 through 4-354 and have been unable to identify any reason to deny inspection of:

1) “[t]he “initial form letter sent[;]” which is an existing Public Record.
2) “[t]he List of recipients to the initial letter[;]”which is an existing Public Record. (The County sent the letters out, and in doing so had a list of the recipients in doing so.)

Please produce those records immediately, in accordance with the law. Please let me know if there is a reason they can not be severed and segregated, or of any harm to the general public in releasing them.

In accordance with MD Gen Provisions Code § 4-205(c)(1) please provide the "screenshots" of the directory(s) where the [3)] "...responses received by the [C]ounty.” are contained on the hard drive in which the "gigabyte of data" Mr. Eschelman referenced is kept.

Thank you for your time and consideration. Without further response by May 1st, 2022 I will consider this a willful and malicious denial of my right to inspect Public Records.To be frank this game of "thrust and parry" or "hide in seek" has gone on long enough. I would please ask the Honorable County Attorney and Custodian to evaluate his position and integrity in respecting and upholding the law.If I actually could imagine it would take the County more than 2 hours to complete the request I would gladly pay. I have always paid, and have receipts for thousands of dollars in fees to the County. These fees in my opinion are just used as an obstacle to detour lawful public inspection, and the behavior must stop.

Sincerely,

Justin Holder

On Wed, Apr 13, 2022 at 2:05 PM Brenda Pizanis <BPizanis@bkcklaw.com> wrote:

> On behalf of Kevin Karpinski.
>
> April 13, 2022
>
> via email Jholder2004@gmail.com only

Justin Holder

308 West Chapline Street

Sharpsburg, Maryland 21782

RE: 342-102

PIA Request to Washington County regarding the Civil War Trail

Justin:

This correspondence is in response to your March 29, 2022 email to Mr. Downey regarding the request you made to Washington County (the "County") pursuant to the Maryland Public Information Act ("PIA"), General Provisions Article § 4-101, *et seq.* In response to your initial request, in which you sought voluminous documents concerning the Civil War Trail, I responded to your request and requested that you make a deposit of $500.00 for the County to continue to locate, copy and review the potentially responsive records. Alternatively, I informed you that you may narrow the request.

You responded to said correspondence indicating that you are essentially willing to narrow your search "and will do so expediently upon production of a list of the total responsive records[.]" You then requested the following: 1) "[t]he "initial form letter sent[;]" 2) "[t]he List of recipients to the initial letter[;]" and 3) "[t]he list of responses received by the [C]ounty." With respect to the "list of the total responsive records" you referenced, I note that the PIA does not require an agency to "create, compile, or program a new record," in response to a request. *Comptroller of Treasury v. Immanuel*, 216 Md. App. 259, 266, 85 A.3d 878, 882 (2014); *see also* Md. Code, General Provisions § 4-205(c)(4)(iii). Therefore, the County will not generate such a list. That being said, you have not sought to narrow your request, given the conditional nature of your communication.

Although you purportedly sought to narrow your request, the prior fee determination, *i.e.*, requiring a $500.00 deposit for the County to proceed in researching, reviewing and preparing the specific records you requested. In addition to search and preparation costs, the records must be reviewed under the PIA to

ensure that any information exempt from disclosure is not disclosed. *See* Md. Code, General Provisions § 4–304, *et seq.* I also note that you will not be charged a fee in reference to the first two hours of search and preparation time, which are free under the PIA. *See* Md. Code, General Provisions § 4-206(c).

Accordingly, the request for a $500.00 deposit remains. The $500.00 deposit is a preliminary estimate and the costs associated with the search, preparation and legal review of the potentially responsive records will likely exceed that amount. To the extent that the records can be identified, reviewed and produced without expending the full amount of your deposit, any remaining funds would be returned to you. In the event your deposit is insufficient to cover the associated costs, I will provide you with a more detailed estimate of costs once the deposit has been expended, should you choose to proceed. Alternatively, you may seek to narrow your request your request to a more manageable scope. If you do so, another determination will be made as to whether a deposit will be required.

Sincerely,

KARPINSKI, CORNBROOKS & KARP, P.A.

/s/

By: Kevin Karpinski

KK:jp

Brenda Pizanis

Administrative Assistant to Kevin Karpinski

Karpinski, Cornbrooks & Karp, P.A.

120 East Baltimore Street

Suite 1850

Baltimore, Maryland 21202-1617

410-727-5000

Fax 410-727-0861

This electronic message transmission contains information that may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.

E-FILED; Washington Circuit Court
Docket: 6/15/2023 4:50 PM; Submission: 6/15/2023 4:50 PM
Envelope: 13069961

Jason Parkins

From: Brenda Pizanis
Sent: Friday, April 22, 2022 9:38 AM
To: Jholder2004@gmail.com
Cc: Kevin Karpinski; Jason Parkins
Subject: 342-102, PIA Request to Washington County regarding the Civil War Trail
Attachments: Holder PIA response - Civil War Trail.pdf

On behalf of Kevin Karpinski.

April 22, 2022

via email Jholder2004@gmail.com only
Justin Holder
308 West Chapline Street
Sharpsburg, Maryland 21782

RE: 342-102
PIA Request to Washington County regarding the Civil War Trail

Justin:

This correspondence is in response to your April 13, 2022 email to Mr. Downey concerning the request you made for certain records pertaining to the proposed Civil War Trial, pursuant to the Maryland Public Information Act ("PIA"), General Provisions Article § 4-101, *et seq*. Without belaboring the procedural history behind the instant request, I responded to your most recent correspondence requesting a $500.00 deposit for the search and preparation costs associated with those records.

You apparently took issue with two aspects of that letter. First, in your initial response to my request for a $500.00 deposit, you indicated that you are "certainly willing to target [your] search and will do so expediently upon production of a list of the total responsive records[.]" To this extent, you were requesting that the County compile a list of the potentially responsive records and provide it to you. That would entail the creation of a new public record, something that the County maintains no obligation to do under the PIA. S*ee* Md. Code, General Provisions § 4-205(c)(4)(iii). As evident from my response, I was referring to the index of files you requested, rather than the responsive records themselves.

Nonetheless, on April 13, 2022 you sought to narrow your request to two items: (i) the initial letter sent to residents regarding the Civil War Trial; and (ii) a list of the recipients of that letter. Attached is the initial letter that was sent to the property owners in the area surrounded the Civil War Trail's proposed location as well as a public notice of the associated meeting. With respect to the list of individuals to whom the letter was sent, the County has reviewed its files and is not in possession of such a list. Given that the letter was sent out almost ten years ago, it is entirely possible that administrative staff maintained such a list in paper format, which no longer exists.

Second, in your April 13, 2022 correspondence, you also requested a screenshot of the directory on a hard drive where the responses the County received are stored. Quizzically, after noting that the PIA does not require a custodian of records to create a new record, you did exactly that by requesting that the County take a screenshot and provide it to you. Undoubtedly, the creation of a screenshot constitutes the creation of a new public record, which the County is neither required to create nor provide to you.

If you would like to receive the correspondences/comments the County received from residents in response to the letter, you will need to make a deposit of $500.00. Although you overlooked this in our previous communications, the County must have the records reviewed prior to their release to ensure that no information exempt from disclosure is inadvertently released. In the event that your deposit is not fully expended on the County's review of said records, any remaining portion of your deposit would be refunded to you with an accounting of the costs.

Feel free to contact my office should you have any questions or concerns.

Sincerely,

KARPINSKI, CORNBROOKS & KARP, P.A.

/s/

By: Kevin Karpinski

KK:jp

Attachment

Brenda Pizanis
Administrative Assistant to Kevin Karpinski
Karpinski, Cornbrooks & Karp, P.A.
120 East Baltimore Street
Suite 1850
Baltimore, Maryland 21202-1617

410-727-5000
Fax 410-727-0861

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WASHINGTON COUNTY
DIVISION OF PUBLIC WORKS
County Administration Building
100 West Washington Street, Room 238
Hagerstown, Maryland 21740-4735
Telephone/TDD: 240-313-2257
Fax: 240-313-2251

Engineering and Construction
Hagerstown Regional Airport
Highways
Parks and Facilities
Transit

May 12, 2012

To: **Washington County Resident/Interested Party**

Ref: **Proposal to Consider a Rail to Trail Project**

Dear Washington County Resident:

You are receiving this letter because you may own property in the vicinity of a project proposal to plan and ultimately construct a bicycle and pedestrian trail from the Hager House within the Hagerstown City Park to the Chesapeake and Ohio Canal Towpath near Weverton. A map showing the possible route is attached for your use.

We are collecting information and seeking feedback regarding the proposed project. We invite you to attend the upcoming public meeting to learn more about the potential project and offer your comments. We hope to establish a project advisory committee to meet regularly and address the concerns raised during the meetings and through correspondence relating to the project.

We value your opinions and concerns, both those supporting the concept and those who may not; all comments are welcomed. I encourage you to provide me with your opinions and a summary of any specific concerns you may have regarding this proposal. **A public information meeting has been scheduled for Thursday, June 21, 2012 at 7:00 pm. The meeting will be held at the Boonsboro Volunteer Fire Company, 6 St. Paul Street, Boonsboro, MD.**

Thank you for your time. If you need additional information, or have any questions, please do not hesitate to contact me.

Sincerely,

Joseph Kroboth, III, PE, LS, PWLF
Director of Public Works

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND
County Administration Building
100 West Washington Street, Room 226
Hagerstown, Maryland 21740-4834
Telephone (Voice/TTY) 240-313-2200
FAX: 240-313-2201

Terry L. Baker, *President*
John F. Barr, *Vice-President*
Ruth Anne Callaham
Jeffrey A. Cline
William B. McKinley

FOR IMMEDIATE RELEASE

CONTACT:
Sarah Lankford Sprecher, Director of Public Relations & Community Affairs
Phone: 240-313-2215
Email: ssprecher@washco-md.net

Norman Bassett, Public Information Officer
Phone: 240-313-2077V/TDD
Email: nbassett@washco-md.net

Public Information Meeting Scheduled to Discuss Proposed Civil War Railroad Trail

Hagerstown, MD (May 16, 2012) – For the past several months, Washington County has partnered with the City of Hagerstown and the Hagerstown Bike Advisory Committee on the planning stages of the proposed Civil War Railroad Trail project that will connect Hagerstown to Weaverton, in the Southern portion of the County. A public information meeting has been scheduled for Thursday, June 21, 2012 at 7:00 p.m. at the Boonsboro Volunteer Fire Company, located at 6 St. Paul Street in Boonsboro, Maryland. The public is invited to attend to learn more about the potential project and offer comments.

The proposed plan would encompass 23.4 miles along the former Baltimore & Ohio Railroad bed, which is now owned by the Maryland Department of Natural Resources. The trail is expected to create healthy lifestyle opportunities, tourism, and economic development for County citizens, passing nearly 14 federal, state, and local parks, and providing easy access to several municipalities. See the **Promoting Healthy Lifestyles and Economic Development** subsection of this release for more information.

Potential Funding Sources/Invited Partners
The project is currently estimated to cost $16.4 million and the following partners could contribute funding:

- Private, non-profit entities
- Washington County and cooperating Municipalities
- State of Maryland, Maryland Department of Transportation, and Maryland Department of Natural Resources
- U.S. Government, U.S. Department of Transportation, and the U.S. Department of the Interior

Steps Taken by the County
In February, the Board of County Commissioners voted to request planning and development funding in a letter to the Maryland Department of Transportation. In March, the Board and the City of Hagerstown sent a letter to the Maryland Department of Natural Resources asking for consideration and support of the project.

During the past few months, information about the proposed concept has been presented to several business and community groups. The County is sending letters to and working with residents along the

planned route to address any landowner concerns. Affected residents, as well as the general public, are invited to the June 21st public meeting to offer feedback on the project.

Public Support for the Project
To date, the County has received over 45 letters and emails of support and less than five letters and emails in opposition of the Civil War Railroad Trail project; furthermore, the Town of Keedysville has publicly endorsed the effort. In addition, a local cycling group has created a Civil War Railroad Trail Facebook page to raise awareness and support for the proposed project. Visit www.facebook.com/CivilWarRailTrail for more information. Titled, "*Let's Get Healthy Washington County,*" Commissioner Ruth Anne Callaham has also created a short YouTube video highlighting the positive lifestyle opportunities the trail could bring to the County. Visit the County's YouTube Channel at www.youtube.com/WashingtonCountyMD or click here to watch the video.

Promoting Healthy Lifestyles and Economic Development
According to the Centers for Disease Control, "Good health starts where you live," and cycling is one of the leading outdoor activities within the County. Improvement in health has a positive impact on the foundations of healthy and happy communities. Daily and weekend traffic on the C&O Canal is proof hikers and bicyclists regularly use such destinations. If the proposed trail in the County comes to fruition, it is expected that small businesses would locate along the route, and at least 200 new jobs could be created in Washington County. Research shows that this project could have an estimated $6.4 million in positive economic impact.

Other Rail Trail Examples
Conversion of former railroad rights of way to hiking and biking trails is not a new concept in Maryland and Washington County. In 2005, twelve miles of the Western Maryland Rail Trail was constructed in Hancock. Another example is *The Great Allegheny Passage,* a 141 mile trail linking Cumberland, Maryland to Pittsburgh, Pennsylvania with a connection to the C&O Canal trail. Small businesses near the *The Great Allegheny Passage* report over $40 million in revenue directly attributed to trail users.

More Information and How to Support the Project
To view additional details about the proposed project, download the fact sheet by clicking here. To help support this effort, the County is encouraging the public contact all government representatives at the local, state, and federal levels. To voice your opinion about the proposed Civil War Railroad Trail to Washington County Government, please send an email to CivilWarRailTrail@yahoo.com. If you would rather write a letter, please address it to 100 West Washington Street, Room 226, Hagerstown, Maryland 21740. The County will continue to release updates on the proposed trail's progress so please stay tuned to the County's website, www.washco-md.net as well as local media outlets.

About Washington County, Maryland Government
Washington County, Maryland Government strives to fulfill its duty to the citizens of Washington County with regard to operational efficiency, fiscal responsibility, and responsiveness to the needs of the community. This vision is used to ably assist the Board of County Commissioners of Washington County in achieving goals for moving the County forward as present needs and future plans are addressed.

According to the Maryland Department of Legislative Services, the Washington County General Fund has the lowest cost per capita for services provided of all 23 counties and Baltimore City. This is attributed to the efficiency, staffing levels, and cost containment exhibited in Washington County Government operations. Visit www.washco-md.net for more information.

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E-FILED; Washington Circuit Court
Docket: 6/15/2023 4:50 PM; Submission: 6/15/2023 4:50 PM
Envelope: 13069961

Jason Parkins

From: Justin Holder <jholder2004@gmail.com>
Sent: Friday, April 22, 2022 11:31 AM
To: Downey, Kirk
Cc: Desaulniers, Kendall A.; Kevin Karpinski; Jason Parkins; Brenda Pizanis
Subject: Fwd: 342-102, PIA Request to Washington County regarding the Civil War Trail
Attachments: Exhibit 2 - Gmail - Civil War Rail Trail.pdf; Exhibit 6 - Gmail - 342-102, PIA Request to Washington County regarding the Civil War Trail.pdf; Gmail - 342-102, PIA Request to Washington County regarding the Civil War Trail.pdf; Gmail - 342-102, PIA Request to Washington County regarding the Civil War Trail.pdf

Mr. Downey,

Good Morning.

Thank you kindly for producing the letter in my request. It is unfortunate the county has lost or "deleted" the List of recipients, and I will not request the County to compile a "new record" per say.

Your agent replied to my April 13th, 2022 modification of my *December 11th, 2021 MPIA - Civil War Rail Trail* in "***Gmail - 342-102, PIA Request to Washington County regarding the Civil War Trail"*** which is attached hereto and incorporated herein by reference. As a courtesy I also attached hereto and incorporated herein all correspondence related to my *December 11th, 2021 MPIA - Civil War Rail Trail.*

Your agent asserted "Second, in your April 13, 2022 correspondence, you also requested a screenshot of the directory on a hard drive where the responses the County received are stored." and "Undoubtedly, the creation of a screenshot constitutes the creation of a new public record, which the County is neither required to create nor provide to you."

I dispute that "tUndoubtedly, the creation of a screenshot constitutes the creation of a new public record". In fact I allege that under MD Gen Provisions Code § 4-205(c)(1) " ...the custodian of a public record ***shall provide*** an applicant with a copy of the public record in a searchable and analyzable electronic format if:" and (5) " (5) If a public record exists in a searchable and analyzable electronic format, the act of a custodian providing a portion of the public record in a searchable and analyzable electronic format ***does not constitute creating a new public record.***" [Emphasis Added] that the Hard Drive in itself IS THE PUBLIC RECORD and under MD Gen Provisions Code § 4-205(d)(1) The copy, **printout**, or photograph **shall be made**: (ii) whenever practicable, where the public record is kept." or MD Gen Provisions Code § 4-205(d)(2) "**The official custodian may set a reasonable time schedule to** make copies, printouts, or **photographs**." [Emphasis Added]

Mr. Downey, could you kindly "set a reasonable time schedule to...photograph" the harddrive with the gigabyte of data in "electronic format" as I allege this undoubtedly "DOES NOT CONSTITUTE CREATING A NEW PUBLIC RECORD"

In fact I find it extremely hard to believe an attorney with the experience you have had could even read the law to interpret the word "screenshot" to "create" or "compile" anything. By Definition a "screenshot" is a noun "an image of the data displayed on the screen of a computer or mobile device." and the data is the "Public Record".

For the sake of arguendo, perhaps your agent has created a dispute of fact for the fact finder as to "**Undoubtedly, the creation of a screenshot constitutes the creation of a new public record**". .Your agent cited the only reported opinion I have found to be relevant to my request and the Court agreed in *Comptroller v. Immanuel*, 85 A.3d 878, 216 Md. App. 259 (Ct. Spec. App. 2014):

"The Comptroller argues, as a mechanical matter, that producing the information Mr. Immanuel requests would impermissibly require him **"to create, compile, or program a new public record."** *See* SG § 10-620(a)(2)(iv)(3). **This subsection has not been construed or applied in any reported cases**, but reviewing the record (and especially the uncontradicted testimony of the Comptroller's hearing witness, Mr. Eichler) against the everyday definitions of the three operative terms—create, compile, and program—**leads us to conclude that this request would *not* require the Comptroller to create a public record**." [Emphasis Added]

I am at a loss to see any good faith basis to dispute the fact that a "**Undoubtedly, the creation of a screenshot constitutes the creation of a new public record**" for the custodian to take such an untenable position on the taxpayers dime, litigating into such strong headwind. These records are all Letters from the General Public to the County Government, and as such Public Records that shall be disclosed. When a citizen writes a letter to the Government and delivers the letter, the citizen consents to the Public disclosure of the same.

For the Government to hide gigabytes's Public Information on a hard drive by charging infinite and never ending fees is certainly not what the legislature had in mind when drafting the MPIA. " MD. General Provisions Code Ann. § 4-201 (2020)(a)(1) "Except as otherwise provided by law, a custodian shall allow a person or governmental unit to inspect any public record at any reasonable time."

I would kindly request to schedule a time to come in and take the "screenshots" myself.

Please provide a time and date for inspection on or before June 1st, 2022.

Respectfully,

Justin Holder

---------- Forwarded message ---------
From: **Justin Holder** <jholder2004@gmail.com>
Date: Wed, Apr 13, 2022 at 4:23 PM
Subject: Re: 342-102, PIA Request to Washington County regarding the Civil War Trail
To: Downey, Kirk <kdowney@washco-md.net>
Cc: Brenda Pizanis <BPizanis@bkcklaw.com>, Jason Parkins <jparkins@bkcklaw.com>, Kevin Karpinski <kevin@bkcklaw.com>

Mr. Downey,

Good afternoon. It was nice to say hi at the Courthouse Monday! I appreciate the hard work you do for the people of this County, Mr. Downey. I also appreciate your correspondence, and write to you as the custodian of Public Records.

I received a response to my March 14th, 2022 correspondence from your agent Mr. Karpinski attached as ***Exhibit 6 - Gmail - 342-102, PIA Request to Washington County regarding the Civil War Trail*** attached hereto and incorporated herein by reference. Mr. Karpinksi was responding on behalf of the Honorable Custodian in relation to the December 11th, 2021 MPIA request, ***Exhibit 2 - Gmail - Civil War Rail Trail*** attached hereto and incorporated herein by reference.

I appreciate your agent's thoughtful response. Specifically your agent summarized our current dispute quite well as a request to target the search by the custodian and the requestor's response of;

"and will do so expediently upon production of a list of the total responsive records[.]" You then requested the following: 1) "[t]he "initial form letter sent[;]" 2) "[t]he List of recipients to the initial letter[;]" and 3) "[t]he list of responses received by the [C]ounty.".

In analyzing your agent's response, I acknowledge and respect the law as stated:

"I note that the PIA does not require an agency to 'create, compile, or program a new record,' in response to a request. *Comptroller of Treasury v. Immanuel*, 216 Md. App. 259, 266, 85 A.3d 878, 882 (2014); *see also* Md. Code, General Provisions § 4-205(c)(4)(iii).";

but dispute explicit the characterization I was requesting the County to "create, compile, or program a new record" when retargeting my request.

Please note in the dicta from *Comptroller of Treasury v. Immanuel*, 216 Md. App. 259, 266, 85 A.3d 878, 882 (2014) your agent cited;

Mr. Immanual asked for more than a list of responsive records, Mr Immanual requested a record be made in a certain order to circumvent other policy:

"a printout of all unclaimed property accounts" that had been unclaimed for two years or longer. In addition to requesting publicly available information — specifically, the names and last-known addresses of those entitled to the property—he asked the Comptroller to format the list "from largest account values to smallest account values" and to provide him "with the listing of the top 5,000 accounts after this formatting is done." In his request, Mr. Immanuel acknowledged that the Public Information Act prohibited him from receiving "information concerning the specific value of each account or a description of the property," and he asked that, once the list was sorted, the specific values be removed. Although the Comptroller, with the help of his information technology ("IT") department, has the ability to perform Mr. Immanuel's request, the Comptroller denied it."

in reviewing the *Abandoned Property Act* the Court reversed:

"With these two caveats, we hold that Mr. Immanuel is entitled to the data that he seeks and that the Comptroller erred in denying his request. Our decisions overlap substantially with the circuit court's decision, but we cannot affirm its judgment. Instead, because the circuit court held that the Comptroller had not raised the "new record" argument and ordered the Comptroller to produce the data sorted by dollar value, we reverse the judgment below and remand for further proceedings for the limited purpose of allowing the circuit court to determine the precise boundaries of the production the Comptroller must make to Mr. Immanuel. In practical terms, Mr. Immanuel should emerge on remand with a list of claims that tracks the Comptroller's disclosure obligations under the Abandoned Property Act, but that is not sorted by dollar value."

The Morral of the story is County Engineer Andrew Eichelman has identified 1 gigabyte of data responsive to my December 11th, 2020 request, and the County is in default of its obligations.

See further MD Gen Provisions Code § 4-205(c)(1) " Except as provided in paragraph (2) [Paragraph 2 is applicable to SDAT] of this subsection, **the custodian of a public record shall provide an applicant with a copy of the public record in a searchable and analyzable electronic format** if:

(i) the public record is in a searchable and analyzable electronic format; [As Mr. Eschelman has identified]

(ii) the applicant requests a copy of the public record in a searchable and analyzable electronic format; and [As the applicant has done]

(iii) the custodian is able to provide a copy of the public record, in whole or in part, in a searchable and analyzable electronic format that does not disclose:

1. confidential or protected information for which the custodian is required to deny inspection in accordance with Subtitle 3, Parts I through III of this title; or

2. information for which a custodian has chosen to deny inspection in accordance with Subtitle 3, Part IV of this title." [Emphasis Added]

AND SEE FURTHER;

MD Gen Provisions Code § 4-205(5) If a public record exists in a searchable and analyzable electronic format, the act of a custodian providing a portion of the public record in a searchable and analyzable electronic format **does not constitute creating a new public record.**

(d) (1) The copy, printout, or photograph **shall be made**:

(i) while the public record is in the custody of the custodian; and

(ii) whenever practicable, where the public record is kept.

(2) The official custodian may set a reasonable time schedule to make copies, printouts, or photographs." [Emphasis Added].

I have made a good faith search of MD Gen Provisions Code § 4-301 through 4-354 and have been unable to identify any reason to deny inspection of:

1) "[t]he "initial form letter sent[;]" which is an existing Public Record.
2) "[t]he List of recipients to the initial letter[;]"which is an existing Public Record. (The County sent the letters out, and in doing so had a list of the recipients in doing so.)

Please produce those records immediately, in accordance with the law. Please let me know if there is a reason they can not be severed and segregated, or of any harm to the general public in releasing them.

In accordance with MD Gen Provisions Code § 4-205(c)(1) please provide the "screenshots" of the directory(s) where the [3)] "...responses received by the [C]ounty." are

contained on the hard drive in which the "gigabyte of data" Mr. Eschelman referenced is kept.

Thank you for your time and consideration. Without further response by May 1st, 2022 I will consider this a willful and malicious denial of my right to inspect Public Records.To be frank this game of "thrust and parry" or "hide in seek" has gone on long enough. I would please ask the Honorable County Attorney and Custodian to evaluate his position and integrity in respecting and upholding the law.If I actually could imagine it would take the County more than 2 hours to complete the request I would gladly pay. I have always paid, and have receipts for thousands of dollars in fees to the County. These fees in my opinion are just used as an obstacle to detour lawful public inspection, and the behavior must stop.

Sincerely,

Justin Holder

On Wed, Apr 13, 2022 at 2:05 PM Brenda Pizanis <BPizanis@bkcklaw.com> wrote:

> On behalf of Kevin Karpinski.
>
> April 13, 2022
>
> via email Jholder2004@gmail.com only
>
> Justin Holder
>
> 308 West Chapline Street
>
> Sharpsburg, Maryland 21782
>
> RE: 342-102
>
> PIA Request to Washington County regarding the Civil War Trail

Justin:

This correspondence is in response to your March 29, 2022 email to Mr. Downey regarding the request you made to Washington County (the "County") pursuant to the Maryland Public Information Act ("PIA"), General Provisions Article § 4-101, *et seq.* In response to your initial request, in which you sought voluminous documents concerning the Civil War Trail, I responded to your request and requested that you make a deposit of $500.00 for the County to continue to locate, copy and review the potentially responsive records. Alternatively, I informed you that you may narrow the request.

You responded to said correspondence indicating that you are essentially willing to narrow your search "and will do so expediently upon production of a list of the total responsive records[.]" You then requested the following: 1) "[t]he "initial form letter sent[;]" 2) "[t]he List of recipients to the initial letter[;]" and 3) "[t]he list of responses received by the [C]ounty." With respect to the "list of the total responsive records" you referenced, I note that the PIA does not require an agency to "create, compile, or program a new record," in response to a request. *Comptroller of Treasury v. Immanuel*, 216 Md. App. 259, 266, 85 A.3d 878, 882 (2014); *see also* Md. Code, General Provisions § 4-205(c)(4)(iii). Therefore, the County will not generate such a list. That being said, you have not sought to narrow your request, given the conditional nature of your communication.

Although you purportedly sought to narrow your request, the prior fee determination, *i.e.*, requiring a $500.00 deposit for the County to proceed in researching, reviewing and preparing the specific records you requested. In addition to search and preparation costs, the records must be reviewed under the PIA to ensure that any information exempt from disclosure is not disclosed. *See* Md. Code, General Provisions § 4–304, *et seq.* I also note that you will not be charged a fee in reference to the first two hours of search and preparation time, which are free under the PIA. *See* Md. Code, General Provisions § 4-206(c).

Accordingly, the request for a $500.00 deposit remains. The $500.00 deposit is a preliminary estimate and the costs associated with the search, preparation and legal review of the potentially responsive records will likely exceed that amount. To the extent that the records can be identified, reviewed and produced without expending the full amount of your deposit, any remaining funds would be returned

to you. In the event your deposit is insufficient to cover the associated costs, I will provide you with a more detailed estimate of costs once the deposit has been expended, should you choose to proceed. Alternatively, you may seek to narrow your request your request to a more manageable scope. If you do so, another determination will be made as to whether a deposit will be required.

Sincerely,

KARPINSKI, CORNBROOKS & KARP, P.A.

/s/

By: Kevin Karpinski

KK:jp

Brenda Pizanis

Administrative Assistant to Kevin Karpinski

Karpinski, Cornbrooks & Karp, P.A.

120 East Baltimore Street

Suite 1850

Baltimore, Maryland 21202-1617

410-727-5000

Fax 410-727-0861

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E-FILED; Washington Circuit Court
Docket: 6/15/2023 4:50 PM; Submission: 6/15/2023 4:50 PM
Envelope: 13069961

Jason Parkins

From: Brenda Pizanis
Sent: Monday, November 28, 2022 2:56 PM
To: Justin K. Holder (jholder2004@gmail.com)
Cc: Kevin Karpinski; Jason Parkins
Subject: 342-102, PIA Request to Washington County regarding November 24, 2022 cybersecurity incident.

On behalf of Kevin Karpinski.

November 28, 2022

via email Jholder2004@gmail.com only
Justin Holder
308 West Chapline Street
Sharpsburg, Maryland 21782

RE: 342-102
PIA Request to Washington County regarding November 24, 2022 cybersecurity incident.

Dear Justin:

This correspondence is in response to the request for records you made pursuant to the Maryland Public Information Act ("PIA"), Maryland Code, General Provisions Article ("GP") § 4-101, *et seq.* to Washington County (the "County") on November 26, 2022 concerning a cybersecurity incident that occurred on November 24, 2022. Specifically, in your request you sought the following records:

> Any and All Communications by email/phone/social media/in person/mail/text
>
> with any person/entity/organization offering/threatening/negotiating to sell/trade/ransom/withhold/destroy/release/compromise
>
> any data held on any county electronic data computer/server/drive/cloud/storage
>
> that was associated/involved/included/related to the 'cybersecurity incident' as described in a facebook post included infra and incorporated herein by reference
>
> the Public record that would inform/describe/index/delineate
>
> the files/data/directories/computers/servers/storage/drives/clouds that
>
> were or were not

breached/stolen/compromised/lost/destroyed/corrupted/damaged/ransomed/temporarily unavailable

during the ransomware and/or cybersecurity incident.

Presently, a law enforcement investigation is underway regarding said cybersecurity incident. Therefore, because of the pending investigation, your request is denied pursuant to GP § 4-351(a)(1). To the extent you are considered a "person in interest" under the PIA with respect to those records, your request is denied pursuant to GP § 4-351(b)(1), (3), and (6) as disclosure of the information you requested would "interfere with a valid and proper law enforcement proceeding[,]" "constitute an unwarranted invasion of personal privacy[,]" and "prejudice an investigation[.]"

Your request is also denied pursuant to GP § 4-338, which requires a custodian to deny inspection of the parts of public records that contain information about the security of an information system. Because your request specifically seeks information regarding the files and communications involved or related to the cybersecurity incident, your request seeks information about the security of the County's information systems.

In the alternative, you request is denied pursuant to GP § 4-343, because the County's Custodian of Records believes that granting your request would be contrary to the public interest. Specifically, as indicated in the above paragraph, granting your request would ultimately compromise certain cybersecurity measures of the County.

I also note that your request is overly broad because the portion of your request seeking "files/data/ directories/ computers/servers/storage/drives/ clouds that were or were not breached/stolen/compromised/lost/destroyed/ corrupted/damaged/ransomed/temporary unavailable" encompasses the entirety of the County's network.

Pursuant to GP § 4-362, you are entitled to seek judicial review of this decision. You may also refer any concerns about this correspondence to the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq*. Additionally, do not hesitate to contact my office in the event you wish to clarify or narrow the scope of your request.

Sincerely,

KARPINSKI, CORNBROOKS & KARP, P.A.

/s/

By: Kevin Karpinski

KK:jp

Brenda Pizanis
Administrative Assistant to Kevin Karpinski
Karpinski, Cornbrooks & Karp, P.A.
120 East Baltimore Street
Suite 1850

Baltimore, Maryland 21202-1617
410-727-5000
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Envelope: 13069961

Jason Parkins

From: Justin Holder <jholder2004@gmail.com>
Sent: Monday, November 28, 2022 3:18 PM
To: Brenda Pizanis
Cc: Kevin Karpinski; Jason Parkins
Subject: Re: 342-102, PIA Request to Washington County regarding November 24, 2022 cybersecurity incident.

Thank you.

I follow up in a few monthes.

On Mon, Nov 28, 2022, 2:56 PM Brenda Pizanis <BPizanis@bkcklaw.com> wrote:

> On behalf of Kevin Karpinski.
>
> November 28, 2022
>
> via email Jholder2004@gmail.com only
>
> Justin Holder
>
> 308 West Chapline Street
>
> Sharpsburg, Maryland 21782
>
> RE: 342-102
>
> PIA Request to Washington County regarding November 24, 2022 cybersecurity incident.
>
> Dear Justin:

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Any and All Communications by email/phone/social media/in person/mail/text

with any person/entity/organization offering/threatening/negotiating to

sell/trade/ransom/withhold/destroy/release/compromise

any data held on any county electronic data computer/server/drive/cloud/storage

that was associated/involved/included/related to the 'cybersecurity incident' as described in a facebook post included infra and incorporated herein by reference

the Public record that would inform/describe/index/delineate

the files/data/directories/computers/servers/storage/drives/clouds that

were or were not

breached/stolen/compromised/lost/destroyed/corrupted/damaged/ransomed/temporarily unavailable

during the ransomware and/or cybersecurity incident.

Presently, a law enforcement investigation is underway regarding said cybersecurity incident. Therefore, because of the pending investigation, your request is denied pursuant

to GP § 4-351(a)(1). To the extent you are considered a "person in interest" under the PIA with respect to those records, your request is denied pursuant to GP § 4-351(b)(1), (3), and (6) as disclosure of the information you requested would "interfere with a valid and proper law enforcement proceeding[,]" "constitute an unwarranted invasion of personal privacy[,]" and "prejudice an investigation[.]"

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Sincerely,

KARPINSKI, CORNBROOKS & KARP, P.A.

/s/

By: Kevin Karpinski

KK:jp

Brenda Pizanis

Administrative Assistant to Kevin Karpinski

Karpinski, Cornbrooks & Karp, P.A.

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Envelope: 13069961

Jason Parkins

From: Justin Holder <jholder2004@gmail.com>
Sent: Monday, December 12, 2022 9:26 AM
To: Downey, Kirk
Cc: Desaulniers, Kendall A.; Kevin Karpinski; Jason Parkins
Subject: MPIA - FBI COMMUNICATIONS RELATE TO CYBER SECURITY INCIDENT

Dear Washington County Custodian of Public Records: Sat, Nov 26, 4:31

I am writing to kindly request Public Information in accordance with MD. General Provisions Code Ann. § 4-101. Please provide the following records:

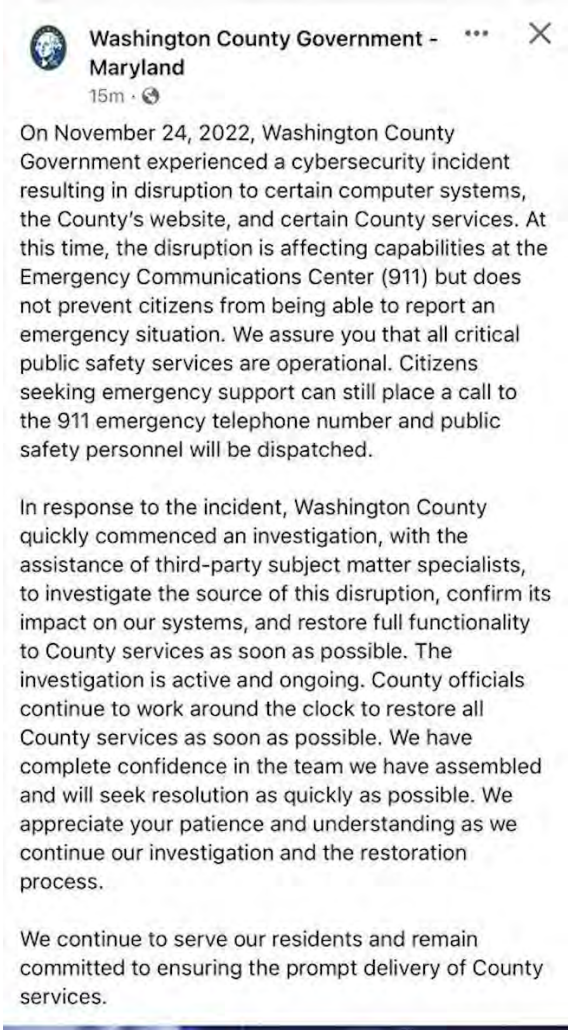
Any and All Communications by email/phone/social media/in person/mail/text (the "Communications")

with any person/entity/agent of the Federal Bureau of Investigation and/or United States Department of Justice and/or the National Security Administration (the "US GOVERNMENT")

relating to any electronic data held/stored/kept on any county electronic data computer/server/drive/cloud/storage (the "data") and/or any

financial/bank/investment/sweep/savings/treasury accounts that were stolen/compromised/looted/hacked/lost (the "money")

that was associated/involved/included/related to the "cybersecurity incident" as described in a facebook post included *infra* and incorporated herein by reference


Washington County Government - Maryland
15m ·
On November 24, 2022, Washington County Government experienced a cybersecurity incident resulting in disruption to certain computer systems, the County's website, and certain County services. At this time, the disruption is affecting capabilities at the Emergency Communications Center (911) but does not prevent citizens from being able to report an emergency situation. We assure you that all critical public safety services are operational. Citizens seeking emergency support can still place a call to the 911 emergency telephone number and public safety personnel will be dispatched.
In response to the incident, Washington County quickly commenced an investigation, with the assistance of third-party subject matter specialists, to investigate the source of this disruption, confirm its impact on our systems, and restore full functionality to County services as soon as possible. The investigation is active and ongoing. County officials continue to work around the clock to restore all County services as soon as possible. We have complete confidence in the team we have assembled and will seek resolution as quickly as possible. We appreciate your patience and understanding as we continue our investigation and the restoration process.
We continue to serve our residents and remain committed to ensuring the prompt delivery of County services.
(the "ransomware"); and

the Public record that would inform/describe/index/delineate

the Washington County Government/Attorney/Sheriff/Administrator/employee/agent (the "County")

DECLINED/REFUSED/DENIED any and/or all assistance and/or help from the US GOVERNMENT

in investigating/recovering/tracking/finding ("Recovering") the County's money and data

during and/or after the ransomware and/or cybersecurity incident.

In short I am requesting any evidence or communications that the County DECLINED/REFUSED/DENIED the assistance and/or help of the US GOVERNMENT IN recovering the money and/or data; I do not want any communications in which the County accepted the assistance of the US GOVERNMENT in Recovering the data and money.

Please provide a time and cost estimate in 10 days.

PUBLIC INTEREST IN DISCLOSURE